

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.173 of 2017**

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Md. Shadique Hussain & Anr

.... Petitioner/s

Versus

Md. Afsar Zamil

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vishal Saurabh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 31-01-2017 Heard the learned counsel, Mr. Vishal Saurabh for the
petitioners.

Perused the impugned order dated 21.12.2016 passed
by learned Munsif, Jehanabad in Eviction Suit No.26 of 2014
whereby the learned Court below has rejected the application filed
by the plaintiff-petitioner under Order 26 Rule 10(A) C.P.C.

It appears that the plaintiff-petitioner filed the eviction
suit on the ground of default in payment of rent with respect to the
suit property. The defendant filed contesting written statement
alleging that the suit property is not situated on the plot mentioned
in the plaint rather it is on different plot and the defendant is not
tenant of the plaintiff. Thereafter, this application under Order 26
Rule 10(A) C.P.C. has been filed. The court below by the
impugned order has rejected this application.

The plaintiff admittedly has filed the suit for eviction of



the tenant on the ground of default. Therefore, the question to be decided is whether there is relationship of landlord and tenant between the parties and whether the defendant has defaulted in payment of rent and for deciding these two issues, the appointment of Pleader Commissioner is not necessary at this stage.

So far the contention of the learned counsel that the defendant is disputing the identity of the suit property is concerned, that may be the matter which shall be considered after the evidences are produced by both the parties and if it will be required by the court then the court has the jurisdiction to appoint Pleader Commissioner in view of the provision as contained in Order 26 Rule 9 read with Rule 10(A) C.P.C.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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