

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.702 of 2016**

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Smt. Sunita Devi

.... Petitioner/s

Versus

Kapildeo Mandal & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ratnakar Ambastha

For the Respondent/s : Mr.

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

4 16-02-2017 The learned counsel for the petitioner submitted that the plaintiff-petitioner filed eviction suit on the ground of personal necessity only. The defendant appeared and admitted the relationship of landlord and tenant but contested the suit on the ground that he has purchased lands over which he has constructed the building and he filed application for appointment of Survey Knowing Pleader Commissioner. The Court below by the impugned order dated 21.05.2016 passed by Munsif I, Munger has wrongly allowed the said application. According to the learned counsel, in an eviction suit, on the ground of personal necessity, the Survey Knowing Pleader Commissioner has got no role to play.

It appears that notices were issued to the respondents by order dated 19.10.2016. In spite of service of notice and in spite of the fact that the name of the learned counsel on behalf of the



respondents is printed in the daily cause list, nobody appeared on behalf of the respondents.

From perusal of the record, it appears that the eviction suit has been filed on the ground of personal necessity only. Therefore, in view of the provision of the B.B.C. Act, now the case has to be decided by adopting the special procedure as provided under Section 14 of the B.B.C. Act. So far the question, raised by the defendant, is a foreign question for decision in the suit for eviction on the ground of personal necessity only. The court below without considering this fact and the law has allowed the application filed by the defendant only on the ground that the defendant has disputed the identity of the suit property.

In view of the above facts and circumstances of the case, in my opinion, the court below has passed the order in the manner not permitted by law and if the order is allowed to stand, it will occasion failure of justice.

Thus, this civil miscellaneous application is allowed. The impugned order is set aside and the application filed by the defendants-respondents for appointment of Survey Knowing Pleader Commissioner is hereby rejected.

(Mungeshwar Sahoo, J)

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