

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6684 of 2013

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Nagendra Singh

.... Petitioner/s

Versus

Smt. Anita Singh & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 08-08-2017 Heard learned Senior Counsel Mr. Devendra Kumar Sinha for the petitioner and learned Senior Counsel Mr. J.S. Arora for respondent no.1.

2. This application under Article 227 of the Constitution of India has been filed by defendant no.1-petitioner for setting aside the order dated 11.02.2013 passed by learned Subordinate Judge-XII, Patna in Title Eviction Suit No.103 of 2011 whereby the learned court below rejected the amendment application filed by defendant no.1-petitioner for amendment in the written statement.

3. The learned Senior Counsel Mr. Sinha appearing on behalf of the petitioner submitted that in fact the defendant no.2 who is the owner of the property had not executed any Power of Attorney in favour of the plaintiff-respondent no.1 which has been stated in the written statement and now the petitioner is



explaining the same by making amendment to the effect that in fact the defendant no.2 has also no title to the suit property and, therefore, she could not have executed Power of Attorney in favour of respondent no.1 but the learned court below has rejected the amendment application without considering the fact that this is only elaboration of the statement earlier made by the petitioner in paragraph 6 of the written statement. According to the learned Senior Counsel, defendant no.2 has got no objection to the said amendment application filed by the petitioner.

4. On the other hand, the learned Senior Counsel Mr. J.S. Arora appearing on behalf of the plaintiff-respondent no.1 submitted that earlier the present defendant no.1-petitioner admitted the title of defendant no.2 and now he is resiling from the said admission and amendment application has been filed to the effect that defendant no.2 has no title to the suit property. Therefore, the amendment application has been rejected by the court below. According to the learned Senior Counsel Mr. Arora, the party cannot be allowed to withdraw the admission made in his pleading and moreover question of title is a foreign question that cannot be decided in an eviction suit under the Bihar Building (Lease, Rent and Eviction) Control Act.

5. Perused the impugned order. From perusal of the



impugned order, I find that the court below has clearly recorded the finding that defendant no.1 has admitted the title of defendant no.2. Earlier statement of the defendant no.1 is only to the effect that Power of Attorney executed by defendant no.2 is forged and fabricated. Now by way of amendment the petitioner is trying to challenge the title of defendant no.2.

6. The Hon'ble Supreme Court in the case of **Rajendra Tiwary Vs. Basudeo Prasad and Another, A.I.R. 2002 Supreme Court 136 =(2002) 1 Supreme Court Cases 90** has held that the sine qua non for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendants the relationship of landlord and tenant should exist. The scope of enquiry before the Court is limited to the question whether the ground for eviction of the defendant had been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms "Landlord" and "Tenant" in clauses (f) and (h), respectively of Section 2 of the Act.

7. Here, by way of amendment the defendant no.1-petitioner is trying to introduce the question of title of defendant no.2. This question of title cannot be decided in this simple suit for eviction filed under the B.B.C. Act. Therefore, the



amendment sought for is not at all necessary for decision of the controversy between the parties.

8. Thus, I find no reason to interfere with the impugned order and accordingly this writ application is dismissed.

(Mungeshwar Sahoo, J)

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