

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.221 of 2016

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Chandreshwar Singh @ Chandreshwar Das, Chela of Mahant Deonandan Das
Resident of Mohalla - Agarpur, P.O. + P.S. + Municipality - Lalganj, Distt. -
Vaishali, Bihar

.... Petitioner

Versus

1. Chameli Devi Wife of Late Ramdeo Mahto
2. Devendra Mahto Son of Late Ramdeo Mahto
3. Shushila Devi Daughter of Late Ramdeo Mahto, W/o Parshuram Mahto
Mohalla - Agarpur, P.O. + P.S. + Municipality - Lalganj, Distt. - Vaishali, Bihar

.... Respondents

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Appearance :

For the Appellant/s : Mr. Shantanu Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-05-2017

Heard the learned counsel for the petitioner.

The present application has been filed questioning the legal sustainability of the impugned order by which the learned court below has allowed the prayer of the substituted defendants to file written statement and adduce evidence and simultaneously has also allowed the plaintiff to file appropriate reply and adduce evidence.

The facts are not in dispute that the earlier suit was filed by the present petitioners as plaintiff for eviction of the defendants. In the said suit, an order was passed under Section 15 of the B.B.C.Act directing the defendants to pay current rent as well as the arrears of rent.



Eventually, the defence of defendant no.2 was struck off for non-compliance of the said direction. It, however, further transpires that the plaintiff-petitioner has subsequently filed a petition for amendment in the plaint for incorporating the relief with regard to declaration of title over the suit property. The said prayer was allowed in the year 1994 whereby the suit for eviction was converted into a regular suit for declaration of title and recovery of possession. It also appears from the records and submissions on behalf of the parties that the defendant no.2 subsequently died and some of his heirs also died during the pendency of the suit and ultimately the step for substitution of the deceased parties was taken by the plaintiff-petitioner and the heirs have been impleaded /substituted in place of the deceased persons.

By the impugned order, the learned court below has allowed the prayer of the substituted defendants to lead evidence after accepting their written statement and has turned down the prayer on behalf of the plaintiff in this regard on the basis that after the defence of the defendants have been struck off, they could not be allowed to lead evidence. The learned court below after considering the facts and circumstances of the case passed the impugned order allowing the substituted defendants to lead evidence accepting the written statement and further has also granted liberty to



the plaintiffs to lead evidence in rebuttal.

In an adversarial system of justice dispensation, no party should ordinarily be denied opportunity of participating in the proceeding unless expressly excluded from doing so by statute. The facts of the present case demonstrates that the suit for eviction earlier filed has later been controverted into a regular suit for declaration of title and recovery of possession. It is not the case on behalf of the plaintiff-petitioner that any written statement was filed on behalf of the defendants after the conversion of the eviction suit into a regular title suit. The submission by the learned counsel for the petitioners is that in the written statement filed by the defendant no.2 the contest was made on the basis of title denying the relationship of landlord and tenant. However, this submission is misconceived in view of the fact that the written statement was filed when the prayer was only for eviction under the B.B.C.Act and the statements made in the written statement at that stage cannot be accepted to be carrying the full-fledged statement contesting the claim of the title of the plaintiff. Indisputably, the real controversy between the parties to the suit now pertains to the title over the suit premises. This Court is thus not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order whereby the learned court below has allowed the prayer of the



substituted defendants to contest the suit by filing written statement and leading evidence.

The application sans merit is accordingly dismissed.

However the fact is apparent that the suit has been pending since long and learned counsel for the parties now have jointly submitted that the parties would complete their evidence whatever within four months. In view of the aforesaid stand on behalf of the parties to this application, the learned court below is directed to proceed expeditiously for disposal of the suit preferably within a period of six months from the date of receipt/production of a copy of this order.

The learned court below is further directed to proceed in accordance with the provisions of the C.P.C. if any of the parties will adopt the dilatory tactics to delay the disposal of the suit.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.06.2017
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