

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.93 of 2015

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1. Ami Chand Gupta S/o Late Ram Gupta residing at Mohalla - Kashturba Path, North S.K. Puri, P.S. S.K. Puri, District - Patna at Present Kanta Kirana Store Kashturba Path, behind Yamuna Apartment, North S.K. Puri, Patna 800013

.... Petitioner/s

Versus

1. Dr. Sidheshwar Prasad Singh S/o Late Yamuna Prasad
2. Avinash Kumar Singh S/o Dr. Sidheshwar Prasad Singh Both residents of Flat No. 201 Panch Ratan Apartment, Mohalla Kashturba Path, North S.K. Puri, P.S. S.K. Puri, P.O. Patliputra Colony, District - Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanat Kumar Mishra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR

SRIVASTAVA

ORAL JUDGMENT

Date: 14-07-2017

Heard Learned counsel for the petitioner as well as learned counsel appearing for the opposite party.

2. The petitioner has challenged the order dated 10.06.2015 passed by the learned Munsif III, Patna in Eviction suit no. 05 of 2013 by which and whereunder he rejected the petition filed on behalf of the petitioner under Order VII Rule 11 of the Civil Procedure Code.

3. The opposite parties filed Eviction suit no. 05 of 2013 against the petitioner on the ground of personal necessity claiming the petitioner as their tenant. However, during pendency of the aforesaid suit, the petitioner filed a petition under Order VII Rule 11 read with



Section 151 of the Civil Procedure Code mentioning therein that originally, the disputed property was part of joint family property but subsequently, when the partition took place in the family of opposite parties, the suit premises fell in the share of Smt. Archana Singh and Amitabh Kumar Singh and, therefore, the petitioner is not a tenant of opposite parties.

4. On the basis of aforesaid pleading the petitioner claimed for rejection of plaint of Eviction suit no. 05 of 2013 by filing a petition under Order VII Rule 11 of the Civil Procedure Code but the learned court below rejected the aforesaid petition of the petitioner holding that the aforesaid fact can only be decided after recording the evidence of the parties and the court below also held that the plaint discloses the cause of action for filing the suit.

5. Learned counsel appearing for the petitioner submits that the learned court below has committed error by holding that the plaint discloses the cause of action for filing the aforesaid suit, but I am not at all convinced with the aforesaid submission because that the rejection of plaint fully depends of averments made in the plaint. Moreover, in the present case, the learned court below has rightly held that the points raised by the petitioner in his petition filed under Order VII Rule 11 of the Civil Procedure Code can only be adjudicated after recording the evidence of the parties and, therefore, I do not find any



ground to interfere into the impugned order. Accordingly, this revision petition stands dismissed on admission stage itself.

6. However, learned court below should expedite the disposal of Eviction suit no. 05 of 2013 as the same is pending since last four years.

(Hemant Kumar Srivastava, J)

N.K/-

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