

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11723 of 2013

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Noorul Hoda

.... Petitioner/s

Versus

Dr. B.N.Prasad & Anr.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Shekhar Dvivedi, Sr. Advocate
Mr. Parth Gaurav, Advocate
Mr. Ranjan Kumar Dubey, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

6 12-09-2017 Heard the learned senior counsel, Mr. S.S.Dvivedi for the petitioner and the learned counsel, Mr. Arvind Kumar Verma for the respondent No.2.

The plaintiff-petitioner has filed this writ application under Article 227 of the Constitution of India for setting aside the order dated 12.04.2013 passed by Sub Judge IX, Muzaffarpur in Eviction Suit No.7 of 2005 whereby the learned Sub Judge has allowed the intervention application filed by the respondent No.2 under Order I Rule 10 C.P.C.

It appears that eviction suit was filed by the plaintiff-petitioner against the respondent No.1 alleging that the plaintiff-petitioner is the landlord and the defendant-respondent No.1 is the tenant on monthly rent of Rs.6,000. He defaulted in paying the rent from the month of February, 2005 and, therefore, the



defendant is a defaulter. In the said eviction suit, the respondent no.2 filed an application under Order I Rule 10 C.P.C. for being added as party on the ground that she is the owner of the property as he has purchased the same from Ataur Rahman. The court below by the impugned order considered the various orders passed in different other suits i.e. partition suit and title suit and came to the conclusion that it is desirable that the intervener be also added as party.

The learned senior counsel, Mr. Dvivedi relied upon the decisions of the Patna High Court reported in 2004(1) PLJR 763 and 2005(2) BBCJ 346 and submitted that in an eviction suit, a person claiming rival title against the plaintiff cannot be added as a party-defendant but the learned court below without considering the settled principles of law laid down by the High Court and without considering as to whether her presence is necessary for deciding the question involved in the eviction suit has allowed the intervention application. According to the learned senior counsel, if the impugned order is allowed to stand it will complicate the matter and there will be multiplicity of proceeding and the plaintiff-petitioner shall be prejudiced. According to the learned senior counsel, the question of title is a foreign question to be decided in an eviction suit. Therefore, the court below could not



have allowed the intervention application.

On the other hand, the learned counsel for the respondent No.2 submitted that the plaintiff-petitioner had filed the title suit for declaration of title which was dismissed and it was held that the property belonged to Ataur Rahman and the respondent No.2 has purchased the property from Ataur Rahman by registered sale deed on 27.01.2005, therefore, the respondent No.2 filed the application for being added as party which has been allowed by the court below considering the order and observation passed by the High Court in writ applications arising out of four suits including the eviction suit.

Perused the impugned order. It appears that the court below nowhere recorded the finding that the presence of the respondent No.2 is necessary for deciding the eviction suit.

It is settled principles of law that a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a necessary party is not impleaded, the suit itself is liable to be dismissed. The court below has not considered this settled principles of law laid down by the Supreme Court in (2010) 7 Supreme Court Cases 417.

So far eviction suit is concerned, only question to be



decided is whether there is relationship of landlord and tenant between the parties or not and whether the grounds set forth by the plaintiff as enumerated in Section 11 of the B.B.C. Act has been proved by the plaintiff or not. So far question of title is concerned, it is a foreign question.

The Hon'ble Supreme Court in the case of **Rajendra Tiwary v. Basudeo Prasad and Another., (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 defendant the relationship of 'landlord and tenant' should exist. The scope of the enquiry before the Courts was limited to the question : as to whether the grounds for eviction of the defendant have been made out under the Act. The question of title of the parties to the suit property is not relevant having regard to the width of the definition of the terms 'landlord' and 'tenant' in clauses (f) and (h), respectively, of S. 2 of the Bihar Building(Lease, Rent & Eviction)Control Act.

Now therefore, it cannot be said that in absence of respondent No.2, the questions regarding relationship of landlord and tenant between the original parties and the grounds mentioned under Section 11 of the B.B.C. Act is there or not is not at all necessary.



This court also in 2004(1) PLJR 763 and 2005(2) BBCJ 346 has held that in an eviction suit, the person who claims title against landlord is not a necessary party.

The learned court below has not considered this aspect of the matter and the legal position laid down by the Supreme Court and the High Court and has allowed the application for being added as party and, therefore, in my opinion, the learned court below has exceeded his jurisdiction.

In the result, this writ application is allowed. The impugned order is set aside and the intervention application filed by the respondent No.2 is rejected.

(Mungeshwar Sahoo, J)

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