

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18371 of 2013

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Satish Kumar

.... Petitioner/s

Versus

Most. Asha Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anish Chandra Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 22-05-2017 Heard learned counsel Mr. Anish Chandra Sinha for the
petitioner.

2. Perused the impugned order dated 02.08.2013 passed
by learned Subordinate Judge-V, Ara in Eviction Suit No.30 of
1991.

3. It appears that the aforesaid eviction suit was filed by
the plaintiffs-respondents against the father of the present
petitioner and the defendant-respondent who was tenant in the suit
premises. He died in the year 2008-2009 and the legal
representatives were substituted. Thereafter notices were issued.
Other defendants appeared and filed contesting written statement
except this petitioner. Notice on this petitioner was accepted as
valid service under Order V Rule 9(5) of the Code of Civil
Procedure. Since this petitioner did not appear, the case was fixed
for ex-parte hearing and then some evidences were adduced and



thereafter the present petitioner appeared and filed application on 22.07.2013 for recall of the order dated 11.11.2011. By the impugned order the court below has rejected this application.

4. Learned counsel Mr. Anish Chandra Sinha for the petitioner specifically submitted before this Court that defendant no.3-present petitioner never resides at Ara (Bhojpur). He resides at Varanasi. He only sometimes comes to Ara but now this petitioner has got dispute with the brothers, who are residing in the suit premises and, therefore, the petitioner never resides in the suit premises. Therefore, summons issued to the petitioner could not be served on him because the address given is the suit premises situated at Ara.

5. In view of the submission of learned counsel for the petitioner himself, the petitioner is not residing in the suit premises nor he has got any concern with the suit premises nor he is in possession of the suit premises. The eviction suit was filed for eviction of the tenant, who is in possession of the suit premises. Only because he is one of the sons of original defendant, he has got no right to contest the suit in view of the submission made by learned counsel for the petitioner and in view of the statements made in the application for recall. If he is not residing in the suit premises and he is not paying rent to the landlord and that he



resides at Varanasi, he has got no concern with the suit premises. Therefore, I do not find any reason to interfere with the impugned order and allow the petitioner, who is not a tenant, to contest the eviction suit.

6. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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