

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21814 of 2013

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Md. Parvez @ Md. Parvez Alam Son of Md. Nijam, resident of mohalla - Sohsarai,
P.O. & P.S.- Sohsarai, District – Nalanda. Petitioner/s

Versus

1. Manoj Kumar Son of Late Lakhan Mahto, resident of mohalla - Sohsarai, P.O.
& P.S. Sohsarai, District – Nalanda.

2. Dayanand Prasad Son of Late Lakhan Mahto, resident of mohalla - Sohsarai,
P.O. & P.S.- Sohsarai, District – Nalanda. Respondent/s

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Appearance :

For the Petitioner/s : M/s Surendra Kumar and Kamla Pd. Singh, Advs.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-11-2017

The defendant before the Court below has preferred this application for quashing the order dated 26.08.2013 passed by the learned Munsif, Biharsharif (Nalanda) in Eviction Suit No. 7 of 2013 whereby and whereunder petition filed under Order 7, Rule 11 of the Civil Procedure Code, was rejected.

2. Heard learned counsel for the petitioner and perused the record.

3. The respondents have filed an eviction suit against the petitioner on the ground of expiry of lease period as well as for their personal necessity. The petitioner filed a petition under Order 7, Rule 11 of the Civil Procedure Code praying therein to reject the plaint as the plaintiffs–respondents have not disclosed the cause of action. They have not made out a case of personal necessity by stating as to



for what purpose they need the suit premises. It has been asserted that the petitioner had paid an amount of Rs.90,000/-as advance at the time of creation of tenancy and the said amount was to be adjusted towards future rent. The tenancy was created on the basis of unregistered lease of deed for a definite period and so the provision of section 106 of Transfer of Property Act is attracted and so the plaint is liable to be rejected.

4. On perusal of plaint and the written statement filed on behalf of the petitioner it appears that the plaintiffs have filed the eviction suit on several grounds including their personal necessity. The matter in dispute cannot be decided without entering into the evidence. There are mixed questions of law and facts for adjudication of issues between the parties and so the learned Court below has rightly rejected the petition. The petitioner has failed to make out a case of rejection of plaint at this stage. As such I do not find any reason to interfere with the impugned order under inherent jurisdiction.

5. This petition is devoid of merit and is accordingly, dismissed.

Mahesh/-

(Sanjay Kumar, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.11.2017
Transmission Date	

