

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16312 of 2014

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Chandra Kishore Sah Son of Late Raj Kishore Sah resident of Mohalla -
Khalifabag, P.O. Bari Post office in the town & District of Bhagalpur

.... Petitioner/s

Versus

1. Sri Babul Kumar Sah
2. Sri Navin Kumar Sah Both sons of Late Shyamal Kishore Sah resident of Mohalla - Khalifabag Chowk, P.O. Bari Post office in the town & District of Bhagalpur
3. Md. Zahid son of Late Md. Magid Proprietor of Bihar Timber Situated at Rajendra Prasad Road, Kalifabag, P.O. Bari Post office, Khalifabag Town & District - Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashutosh Jha, Advocate
Mr. Bijoy Kant Mishra, Advocate
Mr. Avinav Kumar, Advocate
For the Respondent/s : Mr. Deepak Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-07-2018

This application has been filed for quashing the order dated 07.07.2014 passed by Munsif-II, Bhagalpur in Title Eviction No.37 of 2011. The learned court below as per impugned order refused to implead the petitioner as party to the suit.

2. Heard learned counsel for the petitioner and the respondents.

3. The respondent Ist party being plaintiffs filed the aforesaid suit against respondent 2nd set for his eviction on the ground of personal necessity under the provision of Bihar Building (Lease Eviction and Control) Act. The present petitioner filed a petition under Order 1 Rule 10 CPC claiming his right title and interest in the disputed premises and prayed to implead him as defendant 2nd set. The learned counsel for the petitioner submits that this petitioner is admittedly one of the co-sharer of the plaintiff and so being co-owner he has also interest in the suit property. The petitioner has filed a partition suit no.201 of 1993



which is presently pending for disposal.

4. The learned counsel for the respondent on the other hand submits that the respondent 2nd set is tenant of the respondent Ist Party and the suit has been filed for his eviction. The said suit has to be decided on the basis of relationship of landlord and tenant between the parties and so intervention of present petitioner would complicate the eviction suit. The learned counsel for the respondents has supported the impugned order and prayed for dismissal of this writ.

5. Admittedly the petitioner has filed a suit for partition of their property vide Partition Suit No.201 of 1993. The respondent 1st set has filed the eviction suit against the respondent 2nd party on the basis of relationship of landlord and tenant. If the petitioner who claims to be co-sharer is impleaded as party to the suit it would change the nature of the suit. The petitioner claims title on account of being co-sharer of the plaintiff/respondent. In the event of decree, the petitioner would not be prejudiced. The present suit has been filed under the provision of Bihar Building Control Act for eviction of the defendant and so the title and interest of parties can't be adjudicated. In this regard, learned counsel for the petitioner has cited a decision of this Court in a case of Md. Sabir Hussain Siddique vs. Md. Jiyauddin & anr. (1998 (2) PLJR. Page 601) wherein this Court had rejected the prayer of the intervenor in a suit filed eviction of tenant.

6. In view of above fact, this application appears to be devoid of merit and is accordingly, dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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