

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.2030 of 2017

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1. Raj Kumar Jain, S/o Shanti Lal Jain, Proprietor of Readymade Center,
C/o Pradeep Readymade Center, G.B. Road, P.S. Kotwali, P.O. G.P.O.
District Gaya.

.... Appellant/s

Versus

1. Lalit Kumar Jain, S/o Gulzarilal Jain, R/o Mohalla G.B. Road, P.S.
Kotwali, District- Gaya.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ray Saurabh Nath

For the Respondent/s : Mr. Sanjay Singh, Advocate

Mr. Pramod Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

4 09-02-2018 Heard the learned counsel, Mr. Rai Saurabh Nath, for the
petitioner and learned counsel for the respondent on the point of
admission, the Civil Misc. application as well as on I.A. No.8679
of 2017.

The petitioner is the defendant in Eviction Suit No.17 of
2013. The plaintiff filed suit for eviction of suit premises on the
ground of personal necessity. The defendant during the pendency
of the suit filed petition under Order XXVI Rule 9 read with
Section 151 of the CPC for appointment of pleader commissioner
but the learned Munsif rejected the petition of the petitioner.
Being aggrieved by the aforesaid order of the learned Munsif, the
petitioner filed this Misc. petition.



The learned counsel for the petitioner submits that the plaintiff has described the length and width of the rented shop, as mentioned in the Schedule I of the plaint. The case of the defendant petitioner is that he is not the tenant of the plaintiff. The learned counsel for the petitioner further submits that Narendra Kumar Jain, the plaintiff of partition suit No.112 of 2012 was examined as witness on behalf of the plaintiff. In partition suit, the lands falling in the share of the plaintiff and others were shown in different colours, therefore the suit land is required to be measured and the learned Munsif has illegally rejected the petition of the petitioner primarily it appears to be on the ground that no provisions of CPC is applicable, if the eviction suit is proceeded under Section 14 of the BBC Act. But on perusal of the order of the learned Musnif, I find the learned Munsif has clearly held that the suit is for eviction on the ground of personal necessity and only two questions arose; (i) whether the relationship of landlord and tenant exist and (ii) the plaintiff requires the suit premises bonafidely for his personal necessity. It has been held that the appointment of pleader commissioner is not at all required for deciding the two questions. I find that the defendant wanted to appoint pleader commissioner in order to measure the land. In the partition suit itself, the lands shown in different colours are said to



have been allotted to different persons in their share. Therefore, there is no need for appointment of pleader commissioner in a suit for eviction. Thus, I find no illegality or jurisdictional error in the order impugned.

Accordingly, this Civil Misc. petition is dismissed and the I.A. No.8679 of 2017 for stay of impugned order is also dismissed.

(Prabhat Kumar Jha, J)

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