

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1327 of 2016

1. Durgesh Prasad Gupta

2. Umesh Prasad

Both are sons of Late Gobardhan Lal, Resident of Village Aurangabad, P.O.
+P.S.+District Aurangabad.

... .. Plaintiffs/Petitioners

Versus

Dilip Ratoria, Son of Late Shayam Sundar Rotria, Resident of Mohalla Club
Road, Near Bandhu Bhawan, Aurangabad, P.O.+P.S.+District Aurangabad.

... .. Defendant/Respondent

Appearance :

For the Petitioners : Mr. Shailesh Kumar Singh, Advocate

For the Respondent : Dr. Leelawati Kumari

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 14-09-2018

Heard both sides.

2. The petitioners have filed this civil miscellaneous petition against the order dated 14.01.2016, passed in Eviction Suit No.02 of 2013 by which the learned Sub-Judge-IV, Aurangabad dismissed the petition of the petitioners-plaintiffs filed under Section 15 of the Bihar Building (Lease, Rent and Eviction) Control Act (hereinafter referred to as 'the BBC Act') for payment of rent.

3. The learned counsel for the petitioners submits that the petitioners are the owner of the land. The petitioners filed the suit for eviction on the ground of personal necessity and default in payment of rent. During the pendency of the suit, petitioners filed



petition under Section 15 of the BBC Act for realization of rent but the learned Sub-Judge-IV, Aurangabad has rejected the petition of the petitioners on the ground that if the petitioner under Section 15 of the BBC Act is disposed of, that amounts to disposal of the suit and the relief sought for in the plaint as the plaintiffs also prayed for arrears of rent. It is further submitted that the petitioners earlier filed Title Suit No.231 of 2004 for declaration of title against defendants no.1 to 5 of that suit. The suit was decreed. The petitioners were found owner of the land but in the present case the respondent contested the suit that there is no relationship of landlord and tenant and the land belonged to the State of Bihar. It is submitted that the State of Bihar has not filed any suit nor claimed ownership over the land in dispute and the title of the petitioners has already been decided, therefore, the findings of the learned Sub-Judge that if the petition of the petitioners filed under Section 15 of the BBC Act is disposed of, that amounts to disposal of suit, is erroneous. I find that the learned Sub-Judge should have decided the petition of the petitioners filed under Section 15 of the BBC Act. If there is dispute between the petitioners and the respondent about the relationship of landlord and tenant, the respondent may be directed to deposit the rent in the court and the payment of rent shall be decided at the time of disposal of the suit.



4. Considering the facts aforesaid, I find that the learned Sub-Judge has committed jurisdictional error in dismissing the petition of the petitioners filed under Section 15 of the BBC Act. Accordingly, the order dated 14.01.2016, passed in Eviction Suit No.02 of 2013 is set aside. The matter is remitted to the learned Sub-Judge-IV, Aurangabad to pass order afresh in accordance with law.

5. This civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
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