IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.821 of 2011

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Sri Arvind Poddar S/O Sri Shiv Bhagwan Poddar Resident Of Mohalla- Jawahar Lal Road, At P.O And P.S. Muzaffarpur, District- Muzaffarpur.

.... Petitioner/s

Versus

1. Sri Raj Kumar Chanani Late Todar Mal Chenani Resident Of Mohalla- Kachisarai, At P.O. Tamma, P.S- Mithanpura, District- Muzaffarpur, Present Address Raj Kumar Sachiv Kumar, Ground Floor, Laxmi Bhawan, Situated At Mohalla Sutapatti Sarayganj, At P.O. And P.S- Muzaffarpur, District- Muzaffarpu.
2. Abha Chaudhary D/O Late Bishwanath Prasad Choudhary Resident Of Laxmi Bhawan, Mohalla- Sutapatti Saraigyanj, At P.O And P.S- Muzaffarpur, District- Muzaffarpur.
3. Suman Choudhary D/O Late Bishwanath Prasad Choudhary Resident Of Laxmi Bhawan, Mohalla- Sutapatti Saraigyanj, At P.O And P.S- Muzaffarpur, District- Muzaffarpur.
4. Kanu Bishwanath D/O Late Bishwanath Prasad Choudhary Resident Of Laxmi Bhawan, Mohalla- Sutapatti Saraigyanj, At P.O And P.S- Muzaffarpur, District- Muzaffarpur.
5. Komal Choudhary D/O Late Bishwanath Prasad Choudhary Resident Of Laxmi Bhawan, Mohalla- Sutapatti Saraigyanj, At P.O And P.S- Muzaffarpur, District- Muzaffarpur.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 956 of 2011

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Sri Arvind Poddar, son of Sri Shiv Bhagwan Poddar, resident of Mohall-Jawahar Lal Road at P.O. and P.S. Muzaffarpur, District-Muzaffarpur.

.... Petitioner/s

Versus

1. Sri Suresh Kumar Choudhary, son of Late Kabul Chandra Choudhary, resident of Mohalla-Balughat at P.O. and P.S. Muzaffarpur, District Muzaffarpur present address Fashion Sari Kendra, Ist floor, Laxmi Bhawan, Mohalla Sutapatti Saraiyganj, at P.O. and P.S. Muzaffarpur, District-Muzaffarpur.
2. Abha Choudhary,
3. Suman Choudhary, both daughters of late Bishwanath Prasad Choudhary,
4. Kanu Bishwanath &
5. Komal Choudhary, both sons of late Bishwanath Prasad Choudhary, serial no.2 to 5 are resident of Laxmi Bhawan, Mohalla Sutapatti Saraiyganj, at P.O. and P.S. Muzaffarpur, District-Muzaffarpur

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 777 of 2011

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Sri Arvind Poddar S/O Sri Shiv Bhagwan Poddar Mohalla- Jawahar Lal Road At P.O. And P.S. Muzafarpur , District Muzaffarpur

.... Petitioner/s

Versus

1. Sri Gopi Ram Baraulia S/O Late Harsmal Baraulia Mohalla-Doma Pokhar, At P.O. And P.S.Muzaffarpur, District Muzaffarpur
2. Pradeepkumar Baraulia S/O Gopi Ram Baraulia Mohalla-Doma Pokhar, At P.O. And P.S.Muzaffarpur, District Muzaffarpur
3. Abha Choudhary D/O Late Bishwanath Prasad Choudhary Resident Of Laxmi Bhawan , Mohalla Sutapatti Saraiyganj , At P.O. And P.S. Muzaffarpur, District Muzaffarpur
4. Suman Choudhary D/O Late Bishwanath Prasad Choudhary Resident Of Laxmi Bhawan , Mohalla Sutapatti Saraiyganj , At P.O. And P.S. Muzaffarpur, District Muzaffarpur
5. Kanu Bishwanath Late Bishwanath Prasad Resident Of Laxmi Bhawan , Mohalla Sutapatti Saraiyganj , At P.O. And P.S. Muzaffarpur, District Muzaffarpur
6. Komal Choudhary Late Bishwanath Prasad Resident Of Laxmi Bhawan , Mohalla Sutapatti Saraiyganj , At P.O. And P.S. Muzaffarpur, District Muzaffarpur

.... Respondent/s

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Appearance :

(In CWJC No.821 of 2011)

For the Petitioner/s : Mr. Shashi Shekhar Dwivedi, Sr. Advocate
Mr. Parth Gaurav, Advocate
Mr. Shiv Shatyanand, Advocate

For the Respondent/s : None.

(In CWJC No.956 of 2011)

For the Petitioner/s : Mr. Shashi Shekhar Dwivedi, Sr. Advocate
Mr. Parth Gaurav, Advocate
Mr. Shiv Shatyanand, Advocate

For the Respondent/s : None

(In CWJC No.777 of 2011)

For the Petitioner/s : Mr. Shashi Shekhar Dwivedi, Sr. Advocate
Mr. Parth Gaurav, Advocate
Mr. Shiv Shatyanand, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 11-09-2018

All the three writ applications bearing CWJC Nos.956 of

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2011, 821 of 2011 and 777 of 2011 have been filed by the one and same petitioner against the orders dated 16.11.2010 passed by Sub Judge-IV, Muzaffarpur in Eviction Suit No.01 of 2007, 02 of 2007 and 03 of 2007 respectively. All the three eviction suits have been filed against three different tenants. The issues in all the three writ applications are common and so the same have been heard together and are being disposed of by this common order.

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

3. Petitioner Sri Arvind Poddar filed the aforesaid three eviction suits for eviction of three different tenants on the ground of personal necessity as well as recovery of rent contending inter-alia that one Bishwanath Prasad Choudhary executed a registered deed of lease dated 26.03.1996 in favour of the petitioner (plaintiff) for indefinite period with respect to ground and first floor of holding no.229 (old) under ward no.09 existing over plot no.64 under Khata no.304 situated at Mohalla-Sutapatii, Chhoti Sarayganj in the district of Muzaffarpur. The defendants filed objection and denied the relationship of land-lord or tenant as well as their induction as tenants by the plaintiff. They have also denied the payment of rent by them to the plaintiff. The respondent nos.2 to 5 filed an application under Order 1 Rule 10 read with Section 151 of CPC before the court below

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which after hearing both sides was allowed subject to payment of cost of Rs.500/-.

4. The learned counsel for the petitioner submitted that the petitioner has filed all the aforesaid eviction suit on the ground of personal necessity, default in payment of rent and for recovery of arrears of rent. The defendants were inducted as tenants on the basis of lease deed executed by them in favour of the petitioner. The original landlord Bishwanath Prasad Choudhary had executed registered deed of lease in favour of the petitioner and on the basis of said lease deed, he had inducted the defendants in the premises in question on the basis of agreement lease. In a suit for eviction of defendants, the court below has to decide the suit on the basis of relationship of landlord and tenant and question of title cannot be raised by any stranger in the summary procedure of eviction suit.

5. The learned counsel in support of his contention has cited ruling reported in 1998 (2) PLJR page-601 and 2004(1) PLJR page-763 wherein this Court has observed that the issue in the eviction suit is whether the ground of eviction of the defendant-tenants has been proved, the question of title is to be seen only incidentally while examining the land lord-tenant relationship. Any intervention by third party, claiming independent title in himself, is therefore, bound to change the nature of the suit. The intervenor

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defendants who have been impleaded as defendants by the court below is stranger to the suit and they have no right to obstruct the trial.

6. On perusal of impugned order, I find that the suit premises originally belonged to Bishwanath Prasad Choudhary. The said premises was very old and on account of ill heath, the petitioner was entrusted to get the said house repaired for which a registered agreement was executed between the parties on 12.04.1994. It was allegedly agreed that the amount invested by the petitioner would be recovered from the tenants by way of monthly rent. The amount invested by the petitioner was to be adjusted within seven and half years and after that the petitioner would have no concern with the tenants. It appears that after the death of Bishwanath Prasad Choudhary, the respondent nos.3 to 6 being sons and daughters inherited his entire interest. The intervenor respondent nos.3 to 6 admittedly are successor of said Bishwanath Prasad Choudhary. The stand of the intervenor-defendants as asserted in rejoinder is that they are the actual landlord and the petitioner has or had no right to evict the defendants or realize the entire rent from them. The father of the intervenor was entitled to fifty percent of the rent from the tenants. The intervenor-defendants have alleged that the petitioner had repaired the suit premises in the capacity of a building contractor and

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he has/had no concern after a period of 7 ½ years from the date of lease in question. The ruling cited on behalf of the petitioner is not applicable in the present case in view of the fact that the intervenor petitioner in aforesaid case were strangers. The intervenor defendants in present case have been impleaded as party to the suit in the capacity of their being landlords after the death of their father Bishwanath Prasad Choudhary. The plaintiff of aforesaid three eviction suit is not the title holder rather he is claiming interest in the suit premises on the basis of a lease deed for an indefinite period. The petitioner has not filed the copy of said lease deed in court to show the terms and condition of said lease deed.

7. In view of above discussions, I find that the orders impleading the respondent nos.4 to 6 as defendants do not suffer any illegality. All the three applications are devoid of merit and are accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.09.2018
Transmission Date	N/A

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