

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.489 of 2018

Awadh Nath Tiwari Son of Late Ram Avtar Tiwari, Resident of Village-Tadhwanandpur, Police Station-Bairia, District-West Champaran. At Present resident of Bettiah Supriya Road, Banuchhapar, Post Office-Bettiah, Police Station-Bettiah Town District-West Champaran.

... .. Petitioner/s

Versus

Sri Kedar Nath Tiwari Son of Late Ram Avtar Tiwari, Resident of Bettiah Supriya Road, Banuchhapar, Ward No.-35, Post Office-Bettiah, Police Station-Bettiah Town District-West Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shiv Kumar Dwivedy
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 27-11-2018 Heard learned counsel for the petitioner.

The petitioner has filed this civil miscellaneous petition against the order dated 08.11.2017 passed in Eviction Suit No.4 of 2009 by Munsif, West Champaran, Bettiah by which the petition of the petitioner for stay of Eviction Suit No.4 of 2009 till the disposal of Partition Suit No.257 of 2009 has been rejected.

The facts relevant for disposal of this civil miscellaneous petition can be summarised as follows:

According to the case of the petitioner that the disputed land and the house standing thereon was purchased by the father of the petitioner in the name of respondent No.2, Smt. Prabhawati Devi @ Anarkali Devi, wife of respondent No.1,



Kedar Nath Tiwari. The petitioner being younger son of Late Ramavtar Tiwari has been residing in the house but later on, the respondent in order to grab the joint property of the family got the land transferred in the name of respondent No.1 by his wife, respondent No.2 and filed partition suit on the ground of personal necessity. The petitioner also filed Partition Suit No.257 of 2009 for partition of the entire joint family property including the suit land. Learned Munsif after hearing both sides rejected the petition of the petitioner by the impugned order holding that the nature of two suits are quite different and, therefore, the proceeding of eviction suit cannot be stayed till the disposal of partition suit.

Learned counsel for the petitioner submits that the petitioner never resided in the disputed house as a tenant but his own brother filed the suit for eviction on the ground of personal necessity, therefore, proceeding of the eviction suit is required to be stayed till the disposal of the partition suit but I find no force in the submission of the learned counsel for the petitioner on the simple ground that nature of the eviction suit is quite different. The plaintiff of the eviction suit has to prove the relationship of landlord and tenant and if the plaintiff fails to prove the relationship of landlord and tenant, the plaintiff cannot be



entitled to get the eviction order even on the ground of personal necessity.

Having considered the facts aforesaid, I do not find any jurisdictional error or illegality in the order impugned. Accordingly, this civil miscellaneous petition is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

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