

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.526 of 2019

Most. Leela Devi, Wife of Late Dharendra Prasad Gupta, Resident of Mahboob Tola, Police Station-K. Hat (Sahayak), District- Purnia.

... .. Intervenor/Petitioner

Versus

1. Ratandev Gupta, Son of Late Hardev Lal, Resident of Mohalla- Near Old Bus Stand, Police Station- K. Hat, District- Purnia.

... .. Plaintiff/Respondent 1st Set.

2. Shailendra Gupta, Son of Late Dhiren Prasad Gupta, Resident of Mohalla- Near Old Bus Stand, Police Station- K. Hat, District- Purnia.
3. Satyendra Gupta, Son of Late Dhiren Prasad Gupta, Resident of Mohalla- Near Old Bus Stand, Police Station- K. Hat, District- Purnia.
4. Santosh Gupta, Son of Late Dhiren Prasad Gupta, Resident of Mohalla- Near Old Bus Stand, Police Station- K. Hat, District- Purnia.

... .. Defendants/Respondents 2nd Set

Appearance :

For the Petitioner	:	Mr. Jitendra Prasad Singh, Advocate
For the Respondents	:	Mr. Kameshwar Prasad Gupta, Advocate Mrs. Nancy Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 23-08-2019

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

2. In the instant application preferred under Article 227 of the Constitution of India, the intervenor/petitioner has prayed for setting aside the order dated 01.02.2019 passed by the learned Munsif, Sadar, Purnea in Eviction Suit No.12 of 2011 by which his application under Order 1 Rule 10 of the Code of Civil Procedure (for short 'CPC') for being impleaded as intervenor/defendant in the suit has been rejected.



3. Mr. J.P. Singh, learned counsel appearing for the petitioner submitted that when the petitioner came to know about the Eviction Suit No. 12 of 2011, she filed an application on 13.08.2018 under Order 1 Rule 10 of the CPC for being added as a party defendant because in view of the provisions laid down under Section 2(h) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1989 (for short 'BBC Act') she became tenant after death of her husband although she is the owner of the premises and not the tenant.

4. He contended that the plaintiff/respondent 1st set has made a wrong statement in the plaint about the death of the petitioner, but as a matter of fact she is the owner and title holder of the premises and still she is in possession of the same and, as such, she filed a petition for being impleaded as a party to the suit for just and proper decision.

5. He contended that the plaintiff/respondent 1st set filed his rejoinder on 05.10.2018 objecting the claim of the petitioner on the ground inter alia that she has right to establish her case before the civil court by filing fresh suit and not the intervention application. While rejecting the application filed by the intervenor/petitioner vide impugned order dated 01.02.2019, the court below failed to appreciate that even assuming and not



admitting that the husband of the petitioner was tenant then, after his death, she is entitled to continue in possession in view of Section 2(h) of the BBC Act and, therefore, she is a necessary party in the suit, but the plaintiff/respondent 1st set has falsely stated in para 11 of the plaint that she died.

6. On the other hand, learned counsel appearing for the respondent/plaintiff no.1 submitted that there is no error in the order impugned whereby the application of the intervenor/petitioner filed under Order 1 Rule 10 CPC has been rejected. He contended that since the plaintiff is *dominus litis* of the suit, it is for him to implead the parties. He contended that there is absolutely no truth behind the pleading of the petitioner before the court below wherein she has been alleged that the petitioner and defendant are in collusion with each other. According to him, the application has been filed only to delay the disposal of suit, which is at its fag end. He submitted that in case the petitioner has got any interest in the suit property, she may file her own suit.

7. In the impugned order dated 01.02.2019 while rejecting the application of the petitioner under Order 1 Rule 10 of the CPC, the learned Munsif, Purnea observed as under:-

“Perused the case record, Pt. dt. 13.08.2018 and its rejoinder. As per averment in para 1 of the plaint



plaintiff has stated for her that she is dead lady but on the perusal of para 1 of plaintiff's averment is found false. Plaintiff also stated that defendant no. 1 to 3 have been gained over by the plaintiff but she did not disclose that how they have been gained over by the plaintiff. On the perusal of W.S. this court found that they are contesting the suit. As per the petitioner she is the owner of the suit premises. Plaintiff is the master of the suit and he is not willing to implead the petitioner as party in the suit. It is the plaintiff who has to make parties and establish her case. If the petitioner is the owner of the suit land (premises) then she has liberty to file a separate suit to establish her claim.. The suit is running at last stage and plaintiff is also opposing the petition.”

8. Having heard the parties and perused the record, I find that the case of the petitioner is that she is the owner of the suit land. The suit has been filed by the plaintiff in the nature of eviction suit. The three sons of the petitioner are parties to the suit. They are contesting the same. In a suit for eviction, if the petitioner is claiming her own right and title over the property in question, then she may assert her claim by way of filing an independent suit. Her right, title, possession etc. can not be decided in the eviction suit filed on behalf of the plaintiff.



9. Considering the aforestated facts, if the court below has rejected the application of the petitioner filed under Order 1 Rule 10 of the CPC, no illegality can be found with the order. The order impugned is neither without jurisdiction nor perverse.

10. In that view of the matter, I am not inclined to interfere with the same in supervisory jurisdiction under Article 227 of the Constitution of India.

11. The application stands dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.08.2019
Transmission Date	NA

