

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1568 of 2016

1. Baijnath Prasad @ Baidyanath Pd., Son of Late Yamuna Prasad.
2. Draupadi Devi, Wife of Sri Baijnath Prasad.
3. Nitesh Kumar, son of Sri Baijnath Prasad.
4. Aarus Kumar.
5. Kusagra Kumar, both minor sons of Nitesh Kumar under the guardianship of their father and natural guardian Nitesh Kumar.

All residents of Mohalla-Sahebganj, P.O.-Chapra, P.S.-Chapra town,
District- Saran.

... .. Plaintiffs-Petitioners

Versus

1. Shyam Sundar Prasad Gupta, Son of Late Dwarika Prasad Gupta, Resident of Mohalla-East Dahiyawa (Jagadamba Road), P.O.-Chapra, P.S.-Chapra Town, District- Saran.

... .. (Intervenor-defendant)-Respondent 1st Party

2. Manoj Kumar, Son of Shyam Sundar Prasad, resident of Mohalla- Dahiyawa (Jagdamba Road), P.O.-Chapra, P.S.-Chapra Town, District- Saran.

... .. (Defendant)-Respondent 2nd Party-Respondents

Appearance :

For the Petitioners	:	Mr. Sukumar Sinha, Senior Advocate
		Mr. Abinash Kumar, Advocate
For the Respondent No.1:		Mr. Jitendra Kishore Verma, Advocate
		Mr. Abhishek Anand, Advocate
		Mr. Anjani Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 19-07-2019

Heard Mr. Sukumar Sinha, learned senior advocate for the
petitioners and Mr. Jitendra Kishore Verma, learned advocate for the
respondent no.1.



2. This application under Article 227 of the Constitution of India has been filed by the petitioners challenging the order dated 15.12.2016 passed by the learned Sub-Judge-XI, Chapra in Eviction Suit No.5 of 2012 whereby he has allowed the application filed by the respondent no.1 under Order 1 Rule 10 of the Code of Civil Procedure (for short 'CPC') and directed him to be added as defendant in the suit.

3. Mr. Sukumar Sinha, learned senior advocate appearing for the petitioners submitted that the petitioners had filed the suit for eviction of respondent no.2 from the suit premises, who was inducted as tenant in the premises in question. He contended that under the circumstances intervention by any third party was neither necessary nor proper and the court had no jurisdiction to add respondent no.1 as party in the suit. He contended that the trial court also failed to appreciate that the plaintiffs' evidence was closed on 28.04.2015 and, much thereafter, an application under Order 1 Rule 10 of the CPC was filed by the respondent no.1 claiming himself to be the owner of the shop situated over the disputed land. He submitted that the trial court failed to appreciate that in a suit for eviction of the defendant from the suit premises, the question of title of the parties to the suit premises is not relevant. In support of his submission, he has placed reliance on the judgment of the Supreme Court in the matter of



Rajendra Tiwary v. Basudeo Prasad and Another since reported in **AIR 2002 SC 136.**

4. *Per contra*, Mr. Jitendra Kishore Verma, learned counsel appearing for the respondent no.1 submitted that the order impugned does not suffer from any legal infirmity. The petitioners, who are the plaintiffs in the court below have not stated in the plaint as to when and how the defendant was inducted as a tenant in the suit premises. He submitted that the respondent no.1 is the father of Manoj Kumar, who was impleaded in the suit originally as defendant and being *Katra* of HUF, it is he, who was managing the entire state of affairs of the family. He further contended that since the respondent no.1 was the necessary party, the trial court in exercise of its discretionary jurisdiction allowed his application filed under Order 1 Rule 10 of the CPC and directed him to be added as a party. He submitted that the issue whether tenancy of the shop was created in favour of respondent no.2 or respondent no.1 was an issue to be determined and adjudicated in the suit. Thus, in the eviction suit, respondent no.1 is a proper party. Hence, the court has rightly allowed the application filed by the respondent no.1. In support his submission, he has placed reliance on the judgment of the Supreme Court in **Richard Lee v. Girish Soni and Anr.** since reported in **2017 (3) SCC 194.**



5. Having heard learned counsel for the parties and carefully perused the record, I find that the petitioners had filed Eviction Suit No.5 of 2012 in the court of Sub Judge for eviction of the respondent no.2 from the suit premises on the ground of personal necessity under Section 14 of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (for short 'BBC Act').

6. In his plaint, the petitioners had pleaded that they had purchased the suit property from the original owner by virtue of registered sale deed for the purpose of running business, as the suit premises is suitable for running business. After purchase of the suit premises from the original owner, they gave notice to the respondent no.2 to vacate the premises, as they required the same for their own use and occupation reasonably and in good faith.

7. In spite of repeated request, when the respondent no.2 did not vacate the premises, the suit for eviction on the ground of personal necessity was filed.

8. Upon service of summons, the petitioner no.2 appeared in the suit. He filed his written statement denying allegations set forth in the plaint. He stated that he is running his business in jointness with his father and father being the *Karta* is running the business. He also denied the relationship of landlord and tenant. He denied that there is any necessity of the petitioners for the suit premises. On such plea, he prayed that the petitioners' suit be dismissed.



9. The evidence on behalf of the petitioners was adduced. After the closure of the evidence on behalf of petitioners on 28.04.2015, the defence led its evidence.

10. On 22.11.2016, the respondent no.1 filed an application for intervention in the suit under the provision of Order 1 Rule 10 and Section 151 of the CPC. The petitioners filed their rejoinder on 23.11.2016. The respondent no.2 also filed a rejoinder dated 28.11.2016 praying therein to allow the intervention application.

11. Thereafter, by the impugned order dated 15.12.2016, the trial court allowed the intervention application filed by the respondent no.1.

12. Though, it has been pleaded by Mr. Jitendra Kishore Verma, learned counsel for the respondent that for determining and adjudicating as to whether respondent no.1 or respondent no.2 was the tenant in the suit premises, it was necessary that respondent no.1 be impleaded as a proper party, the application filed under Order 1 Rule 10 by the respondent no.1 shows that he had not pleaded that it is he, who is the tenant in the suit premises rather he has pleaded that he is the owner of the shop situated over the disputed land of the suit.

13. The specific plea taken in para 2 of the application of the respondent no.1 reads as under:-

“That the petitioner is owner of the shop situated in the disputed land of this suit, being run by the petitioner



with the help of workers as well as his sons. The defendant of this suit is not the sole owner of the suit.”

14. In view of the fact that respondent no.1 is claiming himself to be the owner of the property, there was no occasion for the court to adjudicate and determine as to who is the tenant in the suit premises.

15. The facts of the present case are quite distinct from the facts in **Richard Lee (supra)**, I see that the ratio laid down by the Supreme Court in the said case with respect to impleadment of a person claiming himself to be the tenant is not applicable to the facts of the present case.

16. It is well settled position in law that in a suit for eviction, impleadment as a party to the suit claiming independent title is not permissible.

17. The petitioners filed the instant suit for eviction of respondent no.2 from the suit premises, who was inducted as a tenant. Under the circumstances, prima facie, intervention of third party was impermissible, as it would have changed the nature of the suit.

18. In a suit for eviction, the only issue to be determined is whether there is relationship of landlord and tenant between the parties and whether the tenant can be evicted under the provision of BBC Act.



19. Learned counsel for the petitioners has rightly relied on the decision of the Supreme Court in **Rajendra Tiwary (supra)**. While dealing with suit of the plaintiffs for eviction of defendant from the suit premises under clauses (c) and (d) of sub-section (1) of Section 11 of the BBC Act, the Supreme Court held in paragraph 7 as under:-

“7. It is evident that while dealing with the suit of the plaintiffs for eviction of the defendant from the suit premises under clauses (c) and (d) of sub-section (1) of Section 11 of the Act. Courts including the High Court were exercising jurisdiction under the Act which is a special enactment. The sine qua non for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of ‘landlord and tenant’ should exist. The scope of the enquiry before the Courts was limited to the question : as to whether the grounds for eviction of the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms “landlord” and “tenant” in clauses (f) and (h) respectively of Section 2 of the Act.”

20. Recently, in the matter of **Kanaklata Das and Ors.** vs. **Naba Kumar Das & Ors.** since reported in (2018) 2 SCC 352, the Supreme Court has held as under:-

“12. First, in an eviction suit filed by the plaintiff (Landlord) against the defendant(Tenant) under the



State Rent Act, the landlord and tenant are the only necessary parties.

13. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.

14. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff-landlord has sought defendant's-tenant's eviction under the Rent Act exists. When these two things are proved, eviction suit succeeds.

15. Third, **the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds.**

16. **Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails.**

17. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a



necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively.

18. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit.

19. Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

20. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant.”

(emphasis mine)

21. After saying so, the Supreme Court further held: “In the eviction suit, the question of title or the extent of the shares held by the appellants and respondent no.1 against each other in the suit premises cannot be decided and nor can be made the subject matter for its determination”.

22. In view of the ratio laid down by the Supreme Court in **Rajendra Tiwary (supra)** and **Kanaklata Das (supra)**, the order



impugned dated 15.12.2016 passed by the learned Sub-Judge-XI, Chapra whereby he has directed the respondent no.1 to be impleaded as defendant in the suit can not be sustained. The same is directly in conflict with the ratio laid down by the Supreme Court in above two cases.

23. Keeping in mind the discussions made above, the order impugned dated 15.12.2016 passed by the learned Sub Judge-XI, Chapra in Eviction Suit No. 5 of 2012 is quashed.

24. The trial court is directed to proceed with the trial expeditiously and dispose of the same as early as possible, preferably within six months from the date of receipt/production of a copy of the order.

25. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2019
Transmission Date	NA

