

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1004 of 2016

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Laxmi Prasad Nayak son of late Ramyash Nayak resident of mohalla - Adarsh Nagar, Ward no. 16, Police Station and District Araria.

... .. Petitioner/s

Versus

Jibintara Khatoon daughter of Ataur Rahman, wife of Manjar Alam @ Bhola, thereafter married with Sri Ramprit Rajak Ex resident of village Nagwara, Police Station Katra, District - Muzaffarpur at present resident of mohalla - Om Nagar, Ward No. 10. 8 , Police Station and District Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Singh, Advocate
For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 22-08-2022

Heard Mr. Arvind Kumar Singh, learned counsel for the petitioner.

2. Despite service of notice and on the last occasion also nobody had appeared on behalf of the Respondent.

3. The petitioner is aggrieved by the order dated 5.3.2016 passed by the learned Munsif, Araria, in Title Eviction Suit No. 03 of 2007 by which the learned Trial Court has rejected the application filed by the plaintiff/petitioner for calling of the affidavit filed by the respondent/tenant in the State Bank of India, Araria Branch, in which, according to the petitioner, she has accepted that she is tenant in the premises situated at Om Nagar, Ward No. 8.



4. The petitioner is the plaintiff who filed an Eviction Suit for eviction of defendant/respondent from the suit premises on the ground of default under Section 11(d) of the Bihar Buildings (Lease Rent and Eviction) Control Act, 1947.

5. Learned counsel for the petitioner submits that the defendant/respondent filed the written statement cum counter claim in the suit and in paragraph-5 of the said document, she has stated that the plaintiff/petitioner is the owner of the suit property along with the residential house in which the petitioner/defendant is residing with her two children in the two rooms which were given to renter Chhanguri Sharma by the defendant/respondent namely, Jabitara Devi. It has further been submitted that the defendant and her husband Ramprit Rajak purchased the land of the suit property along with other land having an area of 0.16 ½ decimal on the payment of valuable consideration money to the plaintiff and she was put in possession. In the meanwhile, her husband was transferred from Araria and due to difference between the petitioner and husband, the plaintiff did not execute sale deed in favour of defendant Jabi Tara Devi.

6. Referring to paragraph-6 of the written statement, learned counsel submits that the defendant further came out with a case that on the coercion/pressure from the side of the plaintiff, the



defendant/respondent developed conjugal relationship with the petitioner and started conjugal life with him on the assurance of the plaintiff that he would marry her after passing the maintenance decree in her favour. Learned counsel further referred to the affidavit filed by the respondent/defendant at Annexure-6/A and submits that the defendant/respondents filed an affidavit before the State Bank of India, Araria Branch on 19.07.2007, categorically stating therein that Ramprit Rajak is the husband of the defendant and she is residing in a rented premises situated at Om Nagar, Ward No. 8 for the last one year along with her children. Accordingly, submission is that the plaintiff/petitioner filed a petition before the learned Trial Court for summoning/calling of the said affidavit in which the defendant/respondent has admitted that she is residing in the rented house at Om Nagar inasmuch as this affidavit is relevant for just and effective disposal of the suit as in the written statement the defendant has denied the fact that she is tenant in the suit premises.

7. Learned counsel for the petitioner relies upon the Section 30 read with Order XVI, Rule 5 and 6 of the Civil Procedure Code and Section 165 of the Evidence Act and submits that the Court has the power to summon any person to produce document, but by the impugned order, the learned Trial Court has



refused to exercise its jurisdiction on technical ground that the certified copy of the affidavit which the plaintiff has sought to be called, has not been filed.

8. No one appears for the respondent.

9. Having heard learned counsel for the petitioner and taking into consideration the fact that the defendant/respondent has admitted in her affidavit that she has been residing in the tenanted house situated at Om Nagar, Ward No. 8, accordingly, in my opinion, the rejection of the petition filed by the plaintiff/petitioner for summoning/calling the document from the State Bank of India on the technical ground that the photocopy of the document has been filed is not sustainable.

10. Accordingly, the impugned order is set aside and the matter is remitted back to the learned Trial Court to re-consider the petition for summoning/calling the document filed by the petitioner on its merit.

11. This application stands allowed.

(Anil Kumar Sinha, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.08.2022
Transmission Date	N.A.

