

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.61 of 2023

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Lakkhi Kumar Khatri Son of Late Jagdeo Prasad Khatri, Resident of Mohalla-
Mathuria, Post and Town and P.S. (Thana)-Biharsharif, District-Nalanda.

... .. Petitioner/s

Versus

1. Savitri Devi Wife of Binay Prasad Resident of Mohalla-Sohsarai, Ranchi Road, Town-Biharisharif, Post and P.S. (Thana)-Sohsarai, District-Nalanda.
2. Binay Prasad Son of Late Rameshwar Prasad Resident of Mohalla-Sohsarai, Ranchi Road, Town-Biharisharif, Post and P.S. (Thana)-Sohsarai, District-Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shashi Ranjan
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 07-10-2023

Heard the parties.

2. The present application has been filed for quashing the order dated 30.11.2010 passed in Eviction Suit No. 20 of 2020 by the Munsif, Biharsharif, Nalanda by which the petition dated 09.11.2022 filed by the petitioner for appointment of Survey Knowing Advocate Commissioner for making local inspection of the suit property has been rejected.

3. The petitioner is a tenant and he has filed an application for local inspection on the ground that there are some shops near the shop of the petitioner and, therefore, the same may be directed to be inspected.

4. It is for the petitioner/plaintiff to decide which shop



he wants to opt for his own personal use and the tenant cannot force a landlord to chose a shop for running his business. Moreover, the Survey Knowing Advocate Commissioner cannot be appointed for collecting evidence.

5. The Supreme Court in the case of ***Balwant Singh & Anr. Vs. Sudarshan Kumar & Anr.*** reported in ***(2021) SCC 1575*** in paragraph No. 11 has held as follows:-

“11. On the above aspect, it is not for the tenant to dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate. Insofar as the earlier eviction proceeding, the concerned vacant shops under possession of the landlords were duly disclosed, but the case of the landlord is that the premises/space under their possession is insufficient for the proposed furniture business. On the age aspect, it is seen that the respondents are also senior citizens but that has not affected their desire to continue their business in the tenanted premises. Therefore, age cannot be factored against the landlords in their proposed business.”

6. From the law laid down by the Supreme Court, it is clear that the landlord cannot be forced by the tenant to opt for a particular shop. Therefore, this application is dismissed.

7. The Munsif, Biharsharif, Nalanda, is directed to conclude the hearing of the Eviction Suit No. 02 of 2020 within four months from the date of receipt/production of a copy of this



order by holding day-to-day hearing without giving unnecessary adjournment to any of the parties. The Court below is further directed to proceed *ex parte* against the non-cooperating party and submit a compliance report to this Court.

8. The Court below will not stay the proceeding without any specific direction from the High Court.

9. Mere filing of an application in this Court by any party will not result in automatic stay of the proceedings of the eviction suit.

10. Let a copy of the order be communicated to the learned District Judge, Biharsharif, Nalanda, through FAX or e-mail forthwith for compliance of the order.

(Sandeep Kumar, J)

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