

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1351 of 2019

Vinod Mishra @ Vinod Das Son of late Mahanth Raghunath Das, Resident of Mohalla- Ward No. 2, Janki Asthan, Police Station and District- Sitamarhi, At Present House No. 104, Anand Palace, Alpana Market, Patliputra Colony, Police Station- Patliputra District- Patna.

... .. Petitioner

Versus

1. Shyam Kumar Son of late Jagdish Sah, Resident of Mohalla- Mirchai Patti, Bazar Bazar, Sitamarhi, Ward No. 8 Nagar Parishad, Sitamarhi, Police Station and District- Sitamarhi.
2. Umesh Sah, Son of Ram Lagan Sah, Resident of Mohalla- Mirchai Patti, Bazar Bazar, Sitamarhi, Ward No. 8 Nagar Parishad, Sitamarhi, Police Station and District- Sitamarhi.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Uday Kumar, Advocate
For the Respondent/s	:	Mr. Rakesh Kumar Sharma, Advocate Mr. Rajesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
Date : 13-11-2024

Heard learned counsels for the respective parties and I intend to dispose of the present petition at the stage of admission itself.

02. Learned counsel for the petitioner submits that the petitioner is aggrieved by the order dated 12.06.2019 passed by the learned Sub Judge-V, Sitamarhi in Eviction Suit No. 03 of 2014, whereby and whereunder the petition filed by the plaintiff/petitioner for taking original *Kirayanamas* dated 19.10.1987 and 11.12.1987, respectively as evidence has been rejected. Learned counsel further submits that the learned trial



court committed an error of jurisdiction when it refused to admit the documents as evidence. The plaintiff was earlier not having knowledge of these documents, the *Kirayanamas*, and hence these documents could not be produced by him. These two documents are very material for disposal of the suit pending before the learned Sub Judge. Learned counsel further submits that the learned trial court ought to have taken this fact into consideration that these documents were quite relevant for adjudication of real controversy between the parties and it ought to have allowed the application filed for taking documents on record as evidence. Learned counsel further submits that the learned trial court has not considered the facts of the case in right perspective and has made an observation that the plaintiff wants to bring on record new facts, which is not correct. Learned counsel further submits that there is specific pleading in the plaint that the plaintiff let out the premises to the respondents and it was only by way of clarification that these documents were being sought to be brought on record. Learned counsel further submits that the father of the respondent no. 1 took the premises on rent from the mother of the plaintiff/petitioner and *Kirayanama* was executed between them and as these documents were not available earlier as the same



got misplaced and as soon as the plaintiff/petitioner came to have those documents, he immediately moved application for taking those documents on record as evidence, which was rejected by the learned trial court. Hence, the impugned order is not sustainable and the same needs to be set aside.

03. Learned counsel appearing on behalf of respondents opposes the submission made on behalf of the petitioner. Learned counsel further submits that there is no infirmity in the impugned order and the learned trial court has considered the facts and circumstances and also the submission of the petitioner. The learned trial court has mentioned that the parties cannot go beyond their pleadings while adducing evidence and the plaintiff has not stated anything about the aforesaid documents in his plaint. Learned counsel further submits that since there is no pleading on record regarding the evidence sought to be brought on record, such evidence cannot be allowed. Thus, the learned counsel submits that there is no illegality in the impugned order and the same does not need interference of this Court.

04. I have given my thoughtful consideration to the rival submission of the parties in the light of facts and circumstances of the case.



05. The plaintiff/petitioner has filed the suit for eviction against the respondents and also for recovery of arrears of rent. In the plaint, there is specific pleading in Paragraph-3 that the plaintiff let out the premises to the late father of respondent no. 1 and the brother-in-law of respondent no.2. Thereafter, subsequent events have been mentioned leading to filing of the suit for eviction. There is no pleading anywhere in the plaint that the *Kirayanama* was executed by the mother of the plaintiff/petitioner. Rather the pleading is about father of the defendants taking the suit premises on rent from the plaintiff. Moreover, the *kirayanamas* are from the year 1987 and the eviction suit has been filed in the year 2014, if such documents were available, pleading should have been in accordance with the documents and not otherwise. The submission that the *Kirayanama* was misplaced will not cut much ice as the plaintiff is supposed to know the facts of his case and he should have pleaded accordingly. Further, it appears that even after moving the application for taking additional evidence in the form of two documents like *kirayanama*, no amendment in plaint was sought. It is the settled law that no evidence could be allowed unless there is pleading in this regard on the record. The evidence is adduced to support the pleadings and it is not other



way round.

06. In the light of discussion made here-in-above, I do not find any infirmity in the impugned order dated 12.06.2019 passed by the learned Sub Judge-V, Sitamarhi in Eviction Suit No. 03 of 2014 and there appears no error of jurisdiction so as to require interference by this Court. Therefore, the impugned order dated 12.06.2019 is hereby affirmed.

07. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.11.2024
Transmission Date	NA

