

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1531 of 2017**

1. Baidyanath Prasad @ Baijnath Prasad, son of Late Yamuna Prasad
- 2.1. Manisha Gupta D/o of Late Draupadi Devi, Resident of Mohalla -Sahebganj, P.O. Chhapra, P.S. Chhapra Town, District- Saran.
- 2.2. Anjana Kumari D/o Late Draupadi Devi, Resident of Mohalla -Sahebganj, P.O. Chhapra, P.S. Chhapra Town, District- Saran.
3. Nitesh Kumar son of Sri Baijnath Prasad
4. Aarus Kumar
5. Kusagra Kumar Both are minor sons of Nitesh Kumar under the guardianship of their father and natural guardian Nite All Residents of Mohalla- Sahebganj P.O. Chhapra, P.S.- Chhapra Town, District- Saran.

... .. Petitioner/s

Versus

1. Prasundatta Jain son of Late Puspdata Jain, Resident of Mohalla- Daulatganj, P.S.- Bhagwan Bazar, District- Saran.
2. Ravi Kumar Gupta, son of Late Ganesh Prasad, Resident of Mohalla- Baradri Katra, P.S. Bhagwan Bazar, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abinash Kumar, Advocate Mr. Kumar Satya Kirti, Advocate
For the Respondent/s	:	Mr. Akhileshwar Pandey, Advocate Ms. Priya Raj, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 11-02-2025

Heard learned counsel for the petitioners as well as learned counsel for the respondents at the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The petitioners are aggrieved by the order dated 16.05.2017 passed by the learned Munsif 1st, Chhapra in Eviction Suit No. 15 of 2012 whereby and whereunder the learned Sub Judge allowed the petition filed by the defendant/respondent 2nd



set under Order 1 Rule 10(2) of the Code of Civil Procedure (for short 'the Code') impleading defendant/respondent 1st set as party to the eviction suit.

3. Learned counsel for the petitioners submits that the impugned order is not sustainable as in a suit for eviction the only issues to be decided are whether there exists a relationship of landlord and tenant between the parties and whether the tenant is liable to be evicted under the provision of Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (for short 'B.B.C. Act'). The learned trial court did not consider that the petition filed by the respondent 2nd set, who is the defendant, before the learned trial court is completely frivolous petition and has been filed only to linger the matter. The application was filed at highly belated stage. Learned counsel further submits that the plaintiffs/petitioners filed the instant suit for eviction of defendant/respondent 2nd set from the suit premises on the ground of personal necessity under Section 14 of the B.B.C. Act. The petitioners have purchased the suit property from original owner by virtue of registered sale deed for the purpose of running their business. They put the defendant/respondent 2nd set to notice for vacating the premises but the defendant/respondent 2nd set did not vacate the suit property and eviction suit was filed by the petitioners. After completion of pleadings, the evidence of the plaintiffs has started



and their evidence was closed on 22.11.2014 thereafter the defendant adduced 13 witnesses till 13.02.2017. On 20.02.2017, the defendant/respondent 2nd set filed an application under Order 1 Rule 10(2) of the CPC for impleading the defendant/respondent no.1 as party to the suit and after hearing the parties, said application was allowed. Filing of the application at such belated stage itself shows *mala fide* of the defendant/respondent 2nd set. Moreover, the learned trial court did not consider the fact that the persons sought to be impleaded is neither necessary nor proper party and, therefore, the learned trial court committed a serious error in passing the impugned orders. If the defendant/respondent 2nd set disputes the title of the plaintiffs/petitioners, the recourse to him is to file a title suit and not to get a person impleaded as party making claim about non-title of the plaintiffs/petitioners. Thus, the learned counsel submits that the impugned order is not sustainable and the same be set aside. Learned counsel further submits that without any stay, the learned trial court did not proceed in the matter and has kept it pending since 2017.

4. Learned counsel appearing on behalf of respondent no.2 vehemently opposes the submission made on behalf of the petitioners. Learned counsel submits that the respondent no.2 has been paying rent to respondent no.1 who took Rs. 3,00,000/- from respondent no.2 for constructing the shop after demolishing it and



agreed for adjustment of rent in the said amount of Rs. 3,00,000/-.

Hence, respondent no.1 is a necessary party. Thus, the learned counsel submits that there is no infirmity in the impugned order.

5. Having regard to the rival submission of the parties and from perusal of record, it is apparent that the learned trial court has passed the impugned order against the settled principles of law. In an eviction suit there is no scope for impleading a person at the instance of defendant who claims the said person used to be his landlord and for this reason, he should be impleaded. It is open for the defendant to prove that the plaintiff claiming eviction is not his landlord and if he successful in it, that would be the end of the matter. However, when a person who is neither necessary nor proper party, he could not be impleaded as a party defendant in an eviction suit. Order 1 Rule 10(2) of the Code is quite clear that it is only those persons whose presence before the Court might be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. But in the present case, only issues involved are whether there is a relationship of landlord and tenant between the plaintiffs and the defendant and whether the defendant is required to vacate the premises and whether there exist any ground for personal necessity of the plaintiffs so as to allow him to get an order in his favour and against the defendant for vacating



the suit premises. In this background, I do not think the person sought to be impleaded has any role who is neither necessary nor a proper party.

6. In the light of discussion made hereinbefore, the impugned order dated 16.05.2017 passed by the learned Munsif 1st, Chhapra in Eviction Suit No. 15 of 2012 could not be sustained and the same is set aside.

7. Accordingly, the present petition stands allowed.

8. As it has been pointed out by the learned counsel for the petitioners that the matter has not proceeded any further since 2017, the learned trial court is directed to expedite the matter since it is an eviction suit of the year 2012 filed on the ground of personal necessity and dispose it of at the earliest and preferably within a period of three months from the date of receipt/production of a copy of this order without granting unnecessary adjournments to either of the parties.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.02.2025
Transmission Date	NA

