

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.859 of 2018

1. Krishna Kumar Tiberwal Son of Late Hanuman Prasad Tibrewal, resident of Village- Behat, Station Bazar, P.O.- Jhanjharpur R.S., P.S.- Madhepur, District- Madhubani.
2. Murali Prasad Tiberwal, Son of Late Hanuman Prasad Tibrewal, resident of Village- Behat, Station Bazar, P.O.- Jhanjharpur R.S., P.S.- Madhepur, District- Madhubani.
3. Sajjan Kumar Tiberwal, Son of Late Hanuman Prasad Tibrewal, resident of Village- Behat, Station Bazar, P.O.- Jhanjharpur R.S., P.S.- Madhepur, District- Madhubani.
4. Rajesh Kumar Tiberwal, Son of Late Hanuman Prasad Tibrewal, resident of Village- Behat, Station Bazar, P.O.- Jhanjharpur R.S., P.S.- Madhepur, District- Madhubani.

... .. Petitioner/s

Versus

1. Sri Shankar Jha Son of Late Krishnadeo Jha, resident of Village- Balani Mahathu, P.S.- Bhairaw Sthan, District- Madhubani, at present resident of Village- Behat, P.O.- Jhanjharpur R.S., P.S.- Madhepur, District- Madhubani.
2. Usha Devi, Wife of Om Prakash Laharuka, Daughter of Late Hanuman Prasad Tibrewal, Resident of Harvansh Road, Sheshpur, Gorakhpur, District- Gorakhpur - 273005, (U.P.).
3. Kushum Devi, Wife of Sri Shushil Kumar Rungata, Daughter of Late Hanuman Prasad Tibrewal, resident of Adarsh Nagar Chowk, Birganj, Nepal.
4. Saroj Devi, Wife of Sri Binod Kumar Chapariya, Daughter of Late Hanuman Prasad Tibrewal, Resident of Village- Bithan, P.O.- Bithan Via Hassanpur Road, District- Samastipur.
5. Manju Devi, Wife of Sri Suresh Jalan, Daughter of Late Hanuman Prasad Tibrewal, resident of Village- Jaleshar, Nepal, No. 2 to 5, wrongly mentioned in the plaint as resident of Village- Behat, Station Bazar, P.O.- Jhanjharpur, R.S. P.S.- Madhepur, District- Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mahesh Nr. Parbat, Sr. Advocate Mr. Ved Prakash Srivastva, Advocate
For the Respondent/s	:	Mr. Abinash Kr., Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 04-03-2025

Heard learned senior counsel for the petitioners as

well as learned counsel for the respondent no. 1.

2. The instant petition has been filed on behalf of the petitioners for quashing order dated 27.04.2018 passed by learned Sub Judge II, Jhanjharpur allowing the application filed by the plaintiff/respondent 1st set filed under Section 15 of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (hereinafter “B.B.C. Act”) directing the defendants/respondents to deposit arrears of rent of disputed premises at the rate of Rs.5000/- per month since October 2012 to April 2018 in Nazarat of Civil Court.

3. Learned senior counsel appearing on behalf of the petitioners submits that the original defendant was father of the petitioner nos. 1-4 and the husband of petitioner no. 5 Hanuman Prasad Tibrewal. He died on 05.04.2014. After filing of the Eviction Suit No. 01 of 2013, though the notices were directed to be issued to the original defendant, there is nothing on record to show that the notice was ever served upon the original defendant. Subsequently, the petitioners came to be substituted in place of the original defendant after his death. The learned trial court did not pass any order of service of notice upon original defendant and still the matter proceeded. Learned counsel further submits that there is no landlord tenant

relationship between the respondent no. 1 and the petitioners, still orders have been passed to deposit rent at the rate of Rs. 5000/- per month. No enquiry has been made about the amount of rent. The respondent no. 1 claims the suit property on the basis of sale deed which is challenged by the petitioners being a fraudulent document and Partition Suit No. 45 of 2015 has been filed in which the sale deed of the respondent no. 1 is under challenge. On the aforesaid grounds, the impugned order could not be sustained.

4. Learned counsel appearing on behalf of the respondent no. 1 vehemently contends that there is no infirmity in the impugned order. The respondent no. 1 filed the eviction suit against the father of the petitioner nos. 1 to 4 and the husband of petitioner no. 5. The service of notice was complete on the original defendant as he refused to accept the notice sent through the process of the Court and acknowledgment of registered cover was never returned. Therefore, there is presumption that it was served upon the original defendant. Thereafter, the petitioners were substituted in place of the original defendant who died on 05.04.2014. The petitioners were duly served with notice and they appeared and contested the claim of the respondent no. 1. The learned counsel further

submits that even otherwise any claim about non-service of notice upon the original defendant is of no consequence since the substituted defendants appeared and contested the matter. Further, the learned trial court after hearing the matter vide a reasoned order allowed the application dated 21.06.2013 filed on behalf of the respondent no. 1. Learned trial court taking into consideration the submission of the petitioners directed them to deposit the rent in the Nazarat of the Court and even directed that no party shall be entitled to withdraw the amount so deposited until the Court decides the dispute and makes the order for payment.

5. Having regard to the facts and submission made on behalf of the parties and considering the fact that challenge to the impugned order is only on the ground that original defendant was not properly served, I find not much merit in the submission of the learned senior counsel for the petitioners. Once the substituted respondents appeared and contested nothing remains in the matter and non-service of notices upon the original defendants is of no consequence. Further, the learned trial court has considered the submission of the parties and finding *prima facie* case, passed orders under Section 15 of the B.B.C. Act and directed the petitioners to deposit the rent in the Court with

stipulation that none of the parties would able to withdraw the same without specific orders in this regard by the learned trial court. I find no infirmity in the impugned order dated 27.04.2018 and hence, the same is affirmed.

6. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.03.2025
Transmission Date	N/A