

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.831 of 2024

Md. Naushad Ali Son of Late Md. Ehteshamuddin, Resident of Mohalla-
Chambeli Chak, Habibpur, PS- Habibpur, Distt.- Bhagalpur. Md. Naushad
(tenant) in premises of Md. Chand Alam, Resident of Mohalla- Tetarpur
Bhagwan Mandir Patt (Main Road) PS- Tetarpur, Distt. and Town- Bhagalpur.
... .. Petitioner/s

Versus

Md. Chand Alam Son of Md. Monish by faith Muslim, Resident of Saidpur,
P.S.- Monsi, Distt- Khagaria at present resident of Mohalla- Tetarpur, P.S.-
Tetarpur, District and Town- Bhagalpur.
... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Vijay Shankar Upadhyay, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 03-01-2025

Record has been taken up on mentioning being
made on behalf of the petitioner.

2. Heard learned counsel for the petitioner and I
intend to dispose of the petition at the stage of admission itself.

3. The petitioner is aggrieved by the order dated
20.04.2024 passed in Title Eviction Suit No. 01 of 2023 by
learned Munsif-II, Bhagalpur, whereby and whereunder the
applications filed by the defendant/petitioner under Order 1
Rule 13 and Order 26 Rule 9 of the Code of Civil Procedure (in
short ‘the Code’) have been rejected.

4. Learned counsel for the petitioner submits that
the petitioner is the lease holder of 20 katha of land from the
power of attorney holder of the original land owner and the



plaintiff/respondent claims to have purchased 2 katha of land from the said land of 20 katha. However, the land of the plaintiff is not the part of 20 katha of land as boundary of the land of the plaintiff is different though khata and khesra are same. Hence, the petitioner is not tenant in the land purchased by the plaintiff/respondent. Further, there is dispute over ownership of the land and four persons claim the ownership. However, the learned trial court has not considered the facts and rejected the applications filed for impleadment of other purported owners as well as for appointment of Survey Knowing Pleader Commissioner to show that the land of the plaintiff/respondent is not the same on which the defendant/petitioner is in occupation.

5. Perused the record.

6. Since it is a case of eviction and the dispute raised by the petitioner pertains to the ownership and possession of the land and it is trite to remind that the title and ownership could not be decided in a suit for eviction. Filing of eviction suit does not mean there is any presumption of landlord-tenant relationship. The plaintiff is bound to prove landlord and tenant relationship for suit to succeed. The onus lies on the person who claims to be landlord to prove such relationship. If any person is



aggrieved by the claim of ownership and title over the suit property in eviction suit, the course open to such person is to agitate the matter in independent title suit as title cannot be decided in an eviction suit. Further, the petitioner has been claiming that he has not occupying any portion of the land purchased by the plaintiff/respondent. The petitioner is required to lead evidence to prove the same. Moreover, under such situation, it is premature for the petitioner to ask for appointment of Survey Knowing Pleader Commissioner under Order 26 Rule 9 of the Code at this stage. Since the petitioner has remedy to assert his claim in course of trial and not at this stage, the petitioner is at liberty to raise all issues at appropriate stage in the trial in Eviction Suit No. 01 of 2023. Therefore, I am not inclined to interfere with the impugned order and the same is affirmed.

7. With the aforesaid observation, the present petition stands disposed of.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.01.2025
Transmission Date	NA

