

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.71 of 2023

1. Shyam Narayan Gupta Son of Late Barhu Saw @ Barhu Lal Saw R/o Jagdeopath, Baily Road, Murlichak, P.S.-Hawaii Adda, P.O.-B.V. College, District-Patna.
2. Shiv Narayan Gupta, Son of Late Barhu Saw @ Barhu Lal Saw R/o Jagdeopath, Baily Road, Murlichak, P.S.-Hawaii Adda, P.O.- B.V. College, District- Patna.

... .. Petitioner/s

Versus

1. Rishi Raj, S/o Sri Arya Jai Raj Gupta, R/o Mohalla Saguna, P.S.-Danapur, P.O.-Danapur Cantt, District- Patna and is running on Business in the Shop Situated at Mohalla Jagdeo Path, P.S.- Hawai Adda, District- Patna.
2. Shyam Babu Gupta @ Shyam Babu Prasad, S/o Late Barhu Sao R/o- Mohalla- Jagdeo Path, P.S.- Hawai Adda, P.O.- B.V. College, Dist.- Patna-14.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate
For the Respondent/s : Mr. Bajarangi Lal, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 21-03-2025

Heard learned counsel for the petitioners as well as the respondents.

2. The petitioners are aggrieved by the order dated 25.08.2022 passed by the learned Munsif-II, Patna in Title Eviction Suit No. 02 of 2016 whereby and whereunder the application dated 08.05.2019 filed by the respondent no.2 under Order 1 Rule 10(2) read with Section 151 of the Code of Civil Procedure (hereinafter 'the Code') has been allowed.

3. Learned counsel for the petitioners submits that the



petitioners are the plaintiffs in Title Eviction Suit No. 2 of 2016 which has been filed by the petitioners as well as their brother one Shyam Babu Gupta against respondent no.1 for eviction of suit premises. The respondent no.2 is also a brother of the plaintiffs. The plaintiffs and respondent no.2 are all sons of one Barhu Saw who was also having one more son by the name of Raj Narayan Gupta. The brothers separated and the suit property came in possession of Raj Narayan Gupta who let out the suit premises to respondent no.1. Raj Narayan Gupta was unmarried and died on 20.02.2014 leaving behind his brothers as heirs/legal representatives. After death of Raj Narayan Gupta, the suit property devolved upon the plaintiffs as well as respondent no.2. The tenant respondent no.1 stopped paying rent to the plaintiffs/petitioners and thereafter he was served with notice to vacate the premises. The tenant appeared and admitted that the plaintiffs have become landlords after death of Raj Narayan Gupta and he also admitted that he had not been paying rent to the new landlords but at the same time he took the plea that he has deposited Rs. 2,75,000/- as security deposit with Shyam Babu Gupta, respondent no.2 who claimed that the suit premises came to him as the same was given to him by Raj Narayan Gupta and started realizing rent after execution of a



Kirayanama dated 05.01.2015 and rent was enhanced to Rs. 4,000/- per month from Rs. 2500/- which was the previous rent. Learned counsel further submits that in the eviction suit, the respondent no.2 filed an application seeking impleadment and the learned trial court without hearing the petitioners, allowed the application though a rejoinder was filed on behalf of the defendant. Title Suit No. 5700 of 2014 is also pending between the plaintiffs and respondent no.2 before the court of learned Sub Judge-1st, Patna for adjudication/declaration and title regarding the suit property. Unless there is declaration about the right, title and possession of the respondent, he has no exclusive claim over the suit property. Moreover, in the eviction suit, filed by the plaintiffs/petitioners, only issue is to be decided by the learned trial court is whether there exists any landlord tenant relationship between the plaintiffs and the defendant and there is no scope for respondent no.2 to get himself impleaded as the court cannot declare the title of the parties in the eviction suit and respondent no.2 is neither necessary nor proper party for adjudication of the determination of landlord tenant relationship and payment of rent. Even in absence of the respondent no.2, decree could be passed and no relief has been sought against respondent no.2 by the plaintiffs. Thus, the learned counsel



submits that the impugned order is not sustainable and the same be set aside.

4. Learned counsel appearing on behalf of respondent no.2 vehemently contends that there is no infirmity in the impugned order. Learned counsel submits that respondent no.2 got the suit premises after death of his brother Raj Narayan Gupta as Raj Narayan Gupta united with respondent no.2 and they had been residing in jointness and after his death, respondent no.2 came into possession of the estate of deceased Raj Narayan Gupta and started realizing rent from the tenant. After filing of the suit by the plaintiffs, the defendant/respondent no.1 stopped paying rent to respondent no.2 and therefore, respondent no.2 was forced to intervene in the matter and sought his impleadment in the eviction suit. Even the Title Suit No. 5700 of 2014 is pending between the parties with regard to the suit property.

5. Having regard to the facts and circumstances and submissions of the parties and the issue involved, it is apparent that the respondent no.2 sought impleadment in an eviction suit filed by the plaintiffs/petitioners. It is settled law that in a suit for eviction, the court is not concerned with the title of the parties and what is at stake is only whether there is any



relationship of landlord and tenant between the parties and if it is proved, then other claim of the petitioners like default of payment of rent or issue of eviction would come into play. But there is no scope for any person to claim or assert his title in eviction suit. Such a person could not be necessary or proper party because no relief is sought against such person and his presence is not even necessary or proper for effective determination of the question involved in the eviction suit. Moreover, the petitioners and respondent no.2 are already before the court of competent jurisdiction for declaration of their title with regard to the suit property. Therefore, I am of the opinion that the learned trial court erred while passing the impugned order. Hence, the impugned order is not sustainable and the same is set aside.

6. Accordingly, the present petition is allowed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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