

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.6 of 2020**

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- 1.1. Md. Naim Husband of Bibi Nashrin Begum and Son of Md. Sirajuddin, Resident of Mohalla- Churamba, P.S. Kotwali, P.O. Munger Pargana, District-Munger.
 - 1.2. Md. Gauhar Son of Md. Naim, Resident of Mohalla- Churamba, P.S. Kotwali, P.O. Munger Pargana, District-Munger.
 - 1.3. Md. Samar, Son of Md. Naim, Resident of Mohalla- Churamba, P.S. Kotwali, P.O. Munger Pargana, District-Munger.
 - 1.4. Mohammad Nazis, Son of Md. Naim, Resident of Mohalla- Churamba, P.S. Kotwali, P.O. Munger Pargana, District-Munger.
 - 1.5. Naziya Perween, D/o Md. Naim, minor and under the guardianship of his father Resident of Mohalla- Churamba, P.S. Kotwali, P.O. Munger Pargana, District-Munger.
 - 1.6. Sana Firdosh, Son of Md. Naim , Minor and under the guardianship of his father Resident of Mohalla- Churamba, P.S. Kotwali, P.O. Munger Pargana, District-Munger.

... .. Petitioner/s

Versus

Md. Samsuddin, Son of Late Abdul Khalique, resident of Mohalla- Murgiachak, Masjid Gali, P.S.- Kotwali, P.O. Munger Pargana, District-Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abdul Mannan Khan, Advocate Mr. Binay Kumar, Advocate
For the Respondent/s	:	Mr. R.K. Sinha 2, Advocate Mr. Tarkeshwar Pd. Verma, Advocate

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

Date : 19-03-2025

Heard learned counsel for the parties.

2. The petitioner is aggrieved by the order dated 15.10.2019 passed in Eviction Suit No. 04 of 2012 by learned Munsif 2nd, Munger whereby and whereunder the application dated 06.04.2019 filed by the respondent under Order 16 Rule 7 read with Section 151 of the Code of Civil Procedure (in short



“the Code”) has been allowed.

3. Shorn of unnecessary details, the case of the parties is that the petitioner as plaintiff has filed Eviction Suit bearing No. 04 of 2012 beseeching the learned trial court to pass a decree of eviction against the defendant/respondent apart from seeking a decree of recovery of Rs.2400/- which became due towards rent. The defendant/respondent appeared and filed his written statement opposing the contention of the plaintiff. It further transpires that as the defendant did not comply the order under Section 15 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, his defence was struck off vide order dated 09.08.2016. It further transpires that during the trial, the defendant filed a petition on 06.04.2019 in the learned trial court submitting that plaintiff has deposed in his suit that she has purchased the suit property from the defendant after taking loan and also taking some money from the account of her husband. So, she may be directed to produce in Court the paper regarding the withdrawal of money from bank account as well as regarding taking of loan. The plaintiff filed rejoinder to the said petition opposing the contention. The learned Munsif 2nd, Munger vide order dated 15.10.2019 allowed the petition filed on behalf of the defendant/respondent directing the plaintiff to



produce all the documents as asked by the defendant.

4. Learned counsel for the petitioner submits that the impugned order is arbitrary, illegal and unjust. The learned trial court did not consider that at the instance of the defendant, it cannot compel the plaintiff to produce certain documents. It is for the plaintiff to prove her case with the evidence she thinks fit and proper and not according to the dictates of the defendant. The learned trial court also did not take into consideration the fact that it is the case of the plaintiff that she has purchased the land in question from the defendant and he has not challenged the sale deed so whether the defendant can now demand producing the evidence regarding receipt of money from which she has purchased the suit property. Since the learned trial court has not considered all the facts and circumstances, the impugned order is an abuse of the process of the Court. Learned counsel further submits that the plaintiff is required to prove landlord tenant relationship and if she fails in her duty, being an eviction suit, her case would fail. She is not supposed to prove her title in the eviction suit. The learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Tribhuvanshankar Vs. Amrutlal*** reported in ***(2014) 2 SCC 788*** wherein the Hon'ble Supreme Court held that in the eviction suit, inquiry is to be



limited to prove the landlord tenant relationship and there is no need to prove title by the landlord to prove the landlord tenant relationship. Thus, the impugned order is not sustainable and the same be set aside.

5. On the other hand, learned counsel appearing on behalf of the respondent submits that there is no infirmity in the impugned order. The petition has been filed by the defendant/respondent under Order 16 Rule 7 read with Section 151 of the Code and the said provision empowers the Court to direct any person present in court to give evidence or produce documents in their possession or power. Further under Order 11 Rule 14 of the Code Court can direct any party to produce the documents relating to any matter in question in such suit. Learned counsel thus submits that the impugned order is perfectly legal. Further when the defendant/respondent has taken a plea that no consideration money passed in this case, it was incumbent upon the plaintiff to prove that the sale deed has been validly executed. Learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Basanagowda Vs. Dr. S.B. Amarkhed and Ors.*** reported in ***(1992) 2 SCC 612*** wherein the Hon'ble Supreme Court held in election matter that the Court is clearly empowered and it shall be lawful for it to



order the production, by any party in the suit provided the production of documents are necessary to decide the matter matter in question. The Hon'ble Supreme Court further held that the Court has been also given the power to deal with the documents when produced in such manner as shall appear just. Thus, learned counsel submits that there is no infirmity in the impugned order and the same needs to be sustained.

6. I have given my thoughtful consideration to the rival submission of the parties. The issue before this Court is within a limited confine whether on application of the defendant, the Court could have asked the plaintiff to produce certain documents.

7. Order 13 Rule 1 of the Code provides as under:

“Order XIII – Production, Impounding and Return of Documents

Rule 1: Original documents to be produced at or before the settlement of issues—

(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to



documents—

(a) produced for the cross-examination of the witnesses of the other party; or

(b) handed over to a witness merely to refresh his memory.”

This provision makes it clear that parties are required to produce all the documentary evidence in original on or before the settlement of issues.

Thereafter Order 11 Rule 14 of the Code is also relevant which reads as under:

“14. Production of documents.

It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.”

It is an empowering provision which makes it clear that it shall be lawful of the Court to order for production by any party thereto of any document in his possession or power relating to the matter in such suit.

Further Order 16 Rule 7 of the Code reads as under:

“7. Power to require persons present in Court to give evidence or produce document.

Any person present in Court may be required by the Court to give evidence or to produce



any document then and there in his possession or power.”

This provision provides for power given to a Court regarding any person present in the Court to be ordered to give evidence or to produce any document then and there in his possession or power.

Now, the conjoint reading of these provisions show that parties are supposed to bring on record all documents on or before the settlement of issues and if they fail to do so, the documents could be filed on record only with leave of the Court. If a party fails to do so, it would be his own risk. In the instant case if the plaintiff failed to bring any relevant document at the stage of settlement of issues, it is her peril. But in certain circumstances, the Court is empowered to direct any person or any of the parties to produce documents in possession of such person provided that the Court thinks it right that production of the documents are necessary to decide the matter in question. Further power has been given to the Court to deal with the documents when produced in such manner as it would appear just to the Court which means the power to order production of documents is coupled with discretion to examine the expediency, justifiability and relevancy of the document with regard to the issue involved in the matter. The Hon'ble Supreme



Court in the *Basanagowda* (supra) has held that the power to order production of documents is coupled with discretion to examine the expediency, justness and the relevancy of the documents to the matter in question. These are relevant consideration which the court shall have to advert to and weigh before deciding to summoning the documents in possession of the party.

8. Now, coming back to the facts of the case, the defendant moved an application seeking certain documents on the basis that in her cross-examination, the plaintiff stated that she would be producing such documents. Now, the learned trial court passed the orders merely reiterating the contention of the defendant without considering whether the documents were necessary, just and relevant for the purpose of deciding the matter before it. The impugned order is completely silent on these points. Though, there could be no quarrel with the fact that the courts are empowered to direct any person/party to produce any document but such order is subject to certain conditions as to whether such documents are necessary and relevant and whether it is expedient to call for such document. Since, the learned trial court has not recorded its opinion or given any reasoning, I am of the view that the impugned order dated



15.10.2019 could not be sustained and hence, the same is set aside.

9. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	AFR
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