

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. 108 of 2024**

Sarita Tekriwalla, aged about 62 years, wife of Shri Bimal Kumar Tekriwalla, resident of Gandhi Chowk, T.P. Bose Road, Madhupur, P.O. Madhupur, P.S. Madhupur, District Deoghar, Jharkhand through its Power of Attorney Holder, namely, Vaibhav Tekriwal, aged about 30 years, son of Shri Bimal Kumar Tekriwalla, resident of Jeevan Jyoti Apartment, Flat-402, 4th Floor, DA/5A, Railpukur Road, Baguiati, Rajarhat Gopalpur (M), Desh Bandhu Nagar, P.O. & P.S. Desh Bandhu Nagar, District North 24 Paraganas, West Bengal Petitioner

Versus

1.Srawan Kumar Gutgutia, son of Late Ram Niranjana Gutgutia.
2.Shiv Kumar Gutgutia, son of Late Ram Niranjana Gutgutia.
3.Kunal Gutgutia, son of Shri Sajan Kumar Gutgutia.
Sl. No.1 to 3 are resident of Ramjus Road, Madhupur, P.O. Madhupur and P.S. Madhupur, District Deoghar
4. Rajendra Kumar Gutgutia, son of Late Lajpat Rai Gutgutia, resident of Hatia Road, Madhupur, P.O. Madhupur and P.S. Madhupur, District Deoghar, Jharkhand Opp. Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Ankit Vishal, Advocate
For the O.P. :

03/21.10.2024 The instant civil miscellaneous petition has been filed on behalf of the petitioner for quashing the order dated 24th January, 2023 passed by the learned Civil Judge (Sr. Division)-I, Madhupur in Misc. Civil Application No.96 of 2022 arising out of Execution Case No.20 of 2016 whereby the petition dated 31st March, 2022 filed by the petitioner under Section 47 of the CPC has been rejected.

2. Learned counsel for the petitioner has submitted that Eviction Suit No.06 of 2000 was filed in the court of learned Civil Judge (Senior Division)-IV, Deoghar and same was decreed vide order dated 30th January, 2015. It is further submitted that the very suit was filed by one of the co-owner for eviction of the tenant in the property in suit and that very suit being decreed, the execution proceeding was initiated on behalf of the plaintiff/decreed holder. It is also submitted that in that very suit, the petitioner was neither arrayed as a plaintiff nor was impleaded as proforma defendant while the plaintiff was also one of the co-owner of the very property in suit. As such, the objection under Section 47 CPC which was rejected by the learned trial court by the impugned order is against

the law.

3. Admittedly, the eviction suit which was filed by the plaintiff against the tenant which was decreed in the very suit, the relationship of landlord and tenant was to be adjudicated by the learned trial court and after adjudication of the relationship of landlord and tenant the ground of eviction being found, the very suit was decreed. It is also admitted fact that the petitioner was neither the decree holder nor the judgment debtor of the eviction suit and his claim is that he is also one of the co-owner of the property in question against which eviction has been sought by one of the co-owner/plaintiff. There is a material difference between the landlord and the owner with regard to the property in question. If there are more co-owners of any property and any one of the co-owner, who has received the rent from the tenant or to whom the rent had been paid would be the landlord. If in a rent eviction suit, the tenant has been evicted and the plaintiff/landlord has been directed to handover the possession of the same, the right, title or interest of co-ownership of the petitioner is not extinguished from the same. If after delivery of the possession to the decree holder of the property in question any right, title or interest in the very property of the petitioner being a co-owner is being prejudiced or adversely affected for the same there is alternate remedy to file application under Order XXI Rule 97 or 99 of the CPC for the right, title and interest against the another co-owner; but the very objection under Section 47 CPC against the impugned decree execution of which is pending before the learned trial court is not at all maintainable. Thus, the learned trial court has rightly rejected the application under Section 47 CPC moved on behalf of the petitioner.

4. In view of the above, discussion, I find that learned trial court has not committed any mistake in rejecting the application of the petitioner filed under Section 47 CPC.

5. Accordingly, this CMP stands dismissed.

Rohit/AFR

(Subhash Chand, J.)