

GAHC010193712024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/389/2024

PAWAN CHANDRA DAS
S/O- LATE BONDHURAM DAS, R/O- DHOLPUR, BORASUK, P.O. AND
MOUZA- DHOLPUR, CIRCLE OFFICE- BIHPURIA, P.S. BIHPURIA, DIST.
LAKHIMPUR, ASSAM

VERSUS

MONI MANIK SINGHA AND 5 ORS
S/O- LATE LAKHINATH SINGHA, R/O- DHOLPUR, BORASUK

2:MONORANJAN SINGHA
S/O- LATE LAKHINATH SINGHA
R/O- DHOLPUR
BORASUK

3:SMT. BANTI SINGHA BORA
W/O- RATUL BORA
R/O- DHOLPUR BORI GAON
P.O. AND MOUZA- DHOLPUR
P.S. BIHPURIA
DIST. LAKHIMPUR
ASSAM

4:SMT. PALLABI SINGHA
D/O- LAKHINATH SINGHA
R/O- DHOLPUR
BORASUK
P.O. AND MOUZA- DHOLPUR
P.S. BIHPURIA

DIST. LAKHIMPUR
ASSAM

5:SMT. LAKHIMI SINGHA DUTTA
W/O- SHRI DEBA KUMAR DUTTA
R/O- HAWAJAN DEORI GAON
P.O. HAWAJAN
P.S. GOHPUR
DIST.SONITPUR
ASSAM

6:SMT. RITAMONI SINGHA
D/O- LAKHINATH SINGHA
R/O- DHOLPUR
BORASUK
P.O. AND MOUZA- DHOLPUR
P.S. BIHPURIA
DIST. LAKHIMPUR
ASSAM

Advocate for the Petitioner : MR. A DHANUKA,

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

30.09.2024

Heard Mr. A. Ganguli, learned counsel for the petitioner.

2. This petition, under Article 227 of the Constitution of India, is directed against the order dated 19.08.2024, passed by the learned Civil Judge, Junior Division No. 2, Lakhimpur at North Lakhimpur, in Petition No. 517/2024, under Order 26 Rule 9 of the C.P.C., in Title Suit No. 22/2022.

3. It is to be noted here that vide order dated 19.08.2024, the learned Civil

Judge, Junior Division No. 2, Lakhimpur at North Lakhimpur has rejected the Petition No. 517/2024, filed by the petitioner in Title Suit No. 22/2022, for appointment of a Survey Commissioner.

4. Mr. Ganguli, learned counsel for the petitioner submits that the petitioner, as plaintiff, has instituted a title suit, being Title Suit No. 22/2022, for recovery of Khas position and permanent injunction against the respondent – defendant, over the schedule land of the plaintiff. Mr. Ganguli further submits that in the said title suit, the evidences of both the parties were closed and thereafter, the petitioner had filed a petition, being Petition No. 517/2024, for appointing one Commissioner to survey and demarcate the schedule land, covered by Dag Nos. 764, 768 & 769 and periodic Patta Nos. 46, 190 & 234, under the Dhalpur Revenue Circle. Mr. Ganguli Also submits that demarcation of the said land is very much necessary as the pleadings of both sides' land covered by Government Khas land, being Patta No. 78 and Dag No. 762. Mr. Ganguli also submits that to arrive at a just decision in the suit, appointment of a Commissioner to demark the said land is very much necessary and therefore, it is contended to allow the petition.

5. Mr. Ganguli also submits that vide impugned order dated 19.08.2024, the learned trial court has rejected the petition, filed by the petitioner, being Petition No. 517/2024, only on the ground that the same was filed at a belated stage. Referring to Order 26 Rule 9 of the C.P.C., Mr. Ganguli submits that the said Rule does not prescribe for any period for filing a petition for appointment of a Commissioner. In support of his submission, Mr. Ganguli has referred to a decision of High Court of Madras, in the case of **Shanmugathai vs. Kamalammal**, reported in **(2017) 2 CTC 353** and another decision of High Court of Orissa, in the case of **Nayana Manjari Sahoo vs. Rajakishore Sahoo**, reported in **(2017) Air (Orissa) 52**.

6. Having heard the submission of learned counsel for the petitioner, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned order dated 09.08.2024, and also perused the decision of High Court of Madras, in the case of **Shanmugathai (supra)** and also the decision of High Court of Orissa, in the case of **Nayana Manjari Sahoo (supra)**. It is to be noted here that in the said two cases it has been held that there is no prescription of stage to file a petition for appointment of commissioner, if the court deemed a local investigation is necessary for the purpose of elucidating any dispute at any issue commission.

7. It appears that the learned trial court has dismissed the petition, filed by the petitioner, being Petition No. 517/2024, only on the ground that the same was being filed at a belated stage. But, Order 26 Rule 9 of the C.P.C. prescribed no period for filing a petition for appointment of commissioner. Besides appointment of the commissioner to demarcate the schedule land of the petitioner, appears to be necessary to elucidate the dispute in just manner.

8. Thus, having examined the impugned order dated 19.08.2024, in the light of the provision of Order 26 Rule 9 of the C.P.C. and also in the light of the decision of High Court of Madras, in the case of **Shanmugathai (supra)** and also in the decision of High Court of Orissa, in the case of **Nayana Manjari Sahoo (supra)**, this court is of the view that the impugned order dated 19.08.2024, being arbitrary fails to withstand the legal scrutiny and therefore, the same stands set aside and quashed.

9. It is provided that the learned trial court shall appoint a Commissioner to demark the schedule land, so covered by Dag Nos. 764, 768 & 769 and periodic Patta Nos. 46, 190 & 234, under the Dhalpur Revenue Circle, which is allegedly covered by Government Khas land, being Patta No. 78 and Dag No. 762 and

thereafter, to hear and dispose of the suit, in accordance with law.

10. In terms of above, this petition stands disposed of, at this motion stage itself.

Comparing Assistant

JUDGE