

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6444 of 2011

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1. Satish Kumar S/O Sri Devendra Singh R/O Mohalla- Amgola, Pankhatoli, Ward No. 34, P.S.-Kazi Mohammadpur, District- Muzaffarpur.

.... Petitioner/s

Versus

1. Aditya Kumar Chatterjee S/O Late Dwijendra Nath Chatterjee R/O Mohalla- Ayodhya Prasad Lane (Pandajee Gali)M Motijheel, P.S.- Town, Distt.- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Manoj

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 08-09-2015

Heard Mr. Manoj Kumar Manoj in support of the writ application which has been filed by the plaintiff-petitioner against the order dated 5.1.2011 passed by Munsif, East, Muzaffarpur in Title Suit No. 83 of 2009 filed for grant of decree of permanent injunction. The suit pertains to 3 categories of land embodied in the plaint. An application was filed for appointment of Advocate Commissioner to inspect the physical features of the suit land pertaining to Schedule-I and III and to submit a report. This was filed before framing of the issues. A rejoinder thereto was filed by the defendant-respondent. The Trial Court, on a consideration of the submissions of the parties and on perusing the pleadings on record, rejected the said application. Aggrieved thereby, the writ petition has been filed.

A supplementary affidavit has been filed on behalf of the petitioner stating therein that an application seeking amendment in the plaint has been filed subsequent to the impugned order which is

pending consideration. This amendment was necessitated owing to certain defect in the pleading with regard to plot number of the land contained in Schedule-I. One of the reasons assigned by the Court for rejecting the application is that plot no. 232(ka) contains an area of 0.0615 hectare which on conversion comes to nearly 3 kathas 15 dhurs of land whereas according to the plaint, Schedule-I property measures 6 kathas of land. That apart from perusal of the order, it appears that the Court also considered the various aspects of the case in order to reject the application.

Law is well settled. The Court is required to appoint Commissioner for local investigation or enquiry in a suit if it is found proper for the purpose of elucidating any dispute. Indisputably, the case was at the nascent stage. This Court, in view of the aforesaid, does not find any patent perversity in the order which requires interference and correction by invoking supervisory jurisdiction under Article 227 of the Constitution of India.

The writ application is dismissed. Dismissal of the application shall, however, not preclude the plaintiff-petitioner from requesting the Court below for appointment of such commission at later stage of the trial.

(Kishore Kumar Mandal, J)

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