

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19126 of 2010

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Ram Guljar Mahto son of late Rameshwar Mahto, resident of village and P.O. Tara Bariyarpur, Sub Registry- Bakhri, sub Division- Manjhaul, P.S. Khodawandpur, District Begusarai.

.... Defendant/ Petitioner

Versus

1. Madan Mohan Shahi
2. Shatrughan Prasad Narain Shahi
Both sons of late Girdhari Prasad Narain Shahi.
3. Shakuntala Devi
4. Manjula Rai
5. Asha Kumari
6. Bijay Shahi (3 to 6 are daughters of late Giridhari Prasad Narain Shahi)
7. Mithilesh Devi widow of late Girdhari Prasad Narain Shahi
All are residents of village and P.O. Tara Prayanpur, P.S. Khodawandpur, Dist. Begusarai.

.... Plaintiffs/ Respondents 1st set.

8. Bhola Mahto
9. Ram Padarath Mahto
10. Mohan Kumar
11. Arun Mahto(8 to 11 sons of late Rameshwar Mahto)
12. Mostt. Kasiya Wife of late Rameshwar Mahto
All are residents of village and P.O. Tara Bariyarpur, Sub Registry Bakhri, Sub Division Manjhaul, P.S. Khodawandpur, Dist-Begusarai
.... Defendants-Respondents 2nd set (Respondents.)

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Appearance :

For the Petitioner/s : Mr. Amresh Kr.Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

3 12-08-2015 Heard Mr. Amresh Kumar Verma in support of the writ application.

The contesting defendant of Title Suit no. 46 of 1998 has filed the present writ petition aggrieved by the order dated 27.08.2010 passed by the trial court disposing of the objection (Annexure-2) filed by the defendant to the report submitted by the

Survey Knowing Pleader Commissioner. In the light of the rejoinder filed thereto on behalf of the plaintiff-respondent the trial Court observed as under in the order:-

“Perused the case record, report of SKPC, evidence of SKPC, as PW-7, petition filed by the defendant dated 9.4.2007 and its rejoinder filed by the plaintiff, I feel it proper that the merit of the report of Pleader Commissioner will be considered at the time of argument, for the ends of justice. Accordingly the petition filed on 9.4.07 on behalf of the defendant is disposed of.”

The counsel for the petitioner has submitted that in all fairness the trial court ought to have considered the objection filed by the petitioner to the report which was not scientifically prepared by the court of the scheduled land inasmuch as the same was not measured from a fixed point. The trial Court in the order has observed that the aforesaid objections shall be considered at the time of argument of the case. On query, Mr. verma, informs the court that the case is now fixed for argument.

Order 26 Rule 9 provides for constitution/ appointment of Commissioner to make local investigation and to report if the court is satisfied that such ascertainment shall be helpful in resolving the real dispute between the parties. Discretion in this regard has been vested in the court. That apart,

in the order impugned the court itself has observed that if need be the request made in the application shall be considered by the court at the time of argument. The stage has not reached.

This Court, in view of the above, does not find any legal flaw in the order meriting interference leaving it to the defendant(s) to raise submission before the court during argument of the case for consideration.

The writ application is dismissed.

(Kishore Kumar Mandal, J)

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