

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20904 of 2010

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Mustafa Kamal S/o Jahir Hussain, resident of village Chauki Hasan P.S.
Gautam Budh Nagar (Tarwara) P.O. Chauki Hasan, Siwan
.....Plaintiff/Petitioner/s

Versus

1. Deelip Been S/o Shankar Been
2. Daroga Lal S/o Late Suraj Deo Lal both are residents of village Chauki Hasan P.S. Gautam Budh Nagar (Tarwara) P.O. Chauki Hasan, Siwan
.....Defendants/Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chandra Kant

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

5 10-08-2015 Heard Mr. Chandra Kant for the petitioner.

No one appeared on behalf of the respondents.

The plaintiff of Title Suit No. 390 of 2006 has filed the present writ application aggrieved by the order dated 06.02.2007 passed by the Sub Judge-III, Siwan. The suit was filed for declaring right, title and interest over the subject land, which is a Kabristan of the family and also for injuncting the defendant(s) from making any construction over the subject land. Ancillary relief was also prayed for.

An application was filed by the plaintiff for appointment of survey knowing Pleader Commissioner to ascertain the status of the subject land which was allowed and the report was submitted by the latter. An objection



thereto appears to have been filed by the defendant(s). However, subsequently another application was filed by the defendant(s) on 15.01.2006. A rejoinder thereto was filed by the plaintiff. The defendant(s) in the said application prayed that the earlier report submitted by the Pleader Commissioner was ex parte inasmuch as no notice thereof was given to the party and the witnesses available on the suit land were also not allowed to record their statements. Noticing the above, the trial court passed the order allowing the application and thereby appointing another Pleader Commissioner for inquiry and report on the same point/issue.

Submission of the counsel is that although under Order 26 Rule 10 CPC it is the satisfaction of the court in passing such order if it is satisfied that for arriving at just decision in the case such appointment of Pleader Commissioner is indispensable/necessary. It has been submitted that an earlier report on the same point was already submitted by the Pleader Commissioner which was not considered and rejected in the light of the objection filed thereto by the defendant(s) before passing the present order. Unless and until the same is done the court ought

not to have mechanically allowed the said application. In my view, the contention of the counsel is not without basis.

From the order impugned it does not appear that the earlier report submitted by the Pleader Commissioner was considered and rejected. Repeated appointment of Pleader Commissioner would only delay the disposal of the matter. It is always advisable the trial court should first consider the report of the Pleader Commissioner already on record in the light of the objection filed by the defendant(s) and, if need be, to appoint another Pleader Commissioner for on the spot inquiry and report. The ends of justice, in my view, shall be subserved if the present writ petition is disposed of by directing as under:-

Let the trial court first consider the first report of the Pleader Commissioner in the light of the objection filed thereto by the defendant(s). If the same is found defective and not acceptable then it will be open to the trial court to take further steps for appointment of a Pleader Commissioner if an application is filed by the party concerned. In doing so, the present order shall not preclude the trial court.

The petitioner undertakes to appear in the suit along with a copy of this order within three weeks enabling the trial court to proceed further in the matter.

(Kishore Kumar Mandal, J)

HR/-

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