

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15506 of 2012

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1. MOST. JIWA DEVI W/O LATE RAM PRASAD YADAV
 2. JAICHANDRA KR. YADAV S/O LATE RAM PRASAD YADAV
 3. RAJESH KUMAR YADAV
 4. PUMPI KUMARI D/O LATE RAM PRASAD YADAV
 5. MOST. ANITA DEVI W/O LATE CHANDRA SHEKHAR YADAV
 6. RAKESH KUMAR MINOR S/O LATE CHANDRA SHEKHAR YADAV
 7. SOURAV KUMAR
 8. GOURAV KUMAR
- ALL ARE MINOR S/O LATE CHANDRA SHEKHAR YADAV
UNDER THE GUARDIANSHIP OF THEIR MOTHER AND
NATURAL GUARDIAN ANITA DEVI (PETITIONER NO.5)
ALL ARE RESIDENTS OF CHAUDHARY MOHALLA, P.S &
DISTRICT- KATIHAR.

.... PETITIONER/S

VERSUS

1. NOOR MOHAMMAD S/O LATE HANIF ANSARI RESIDENT OF
MOHALLA- HARIGANJ, KATIHAR, P.S & DISTRICT- KATIHAR.
2. TAPAN KUMAR MANDAL S/O LATE UMESH KUMAR MANDAL
RESIDENT OF VILLAGE- KURETHA, P.S- PRANPUR, AT
PRESENT RESIDENT OF PROFESSOR COLONY, DURGA
ASTHAN, P.S & DISTRICT- KATIHAR.

.... RESPONDENT/S

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Appearance:

For the Petitioner/s : Mr. Sashi Shekhar Dewedi, Sr.Adv.
For the Respondent/s : Mr. Rama Nand Poddar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

7 08-12-2015 Heard learned counsel for the petitioners as well as

learned counsel for the respondents.

The controversy relates with the new Survey Plot
No.363/768 measuring an area 1 acre 20 decimal regarding which
it has been pleaded on behalf of petitioners/plaintiffs that 60
decimal of C.S. Plot No.1392 and 60 decimal of C.S. Plot No.2504
constitute the aforesaid are of 1 acre of 60 decimal.

During course of argument, it has been traced out

that C.S. Plot No.2504 belongs to State however, State of Bihar is not a party.

Petitioners are aggrieved by an order dated 10.04.2012 passed by Sub-Judge-III, Katihar in Title Suit No.129 of 2003 whereby and whereunder prayer of the petitioner for appointment of Survey Knowing Pleader Commissioner has been rejected.

During course of advancing his argument, learned counsel for the petitioners drew attention towards Annexure-6 order dated 03.08.2009 which was passed by the learned lower court while considering the prayer of *ad interim* injunction and further drew towards the relevant portion of the order wherein the court had observed that without examination of witnesses, plaintiff may not be allowed to collect evidence at this stage and that was only with regard to appointment of Pleader Commissioner and that too with regard to see a report over local inspection of the disputed plot.

Furthermore, it is apparent from the order impugned that Amin has been examined on behalf of petitioner/plaintiff as PW.1 who had produced field book, Ext.1 filed book map Ext.2 after measuring the suit land. Those things are not available on the record however to ascertain identity to Survey Plot No.363/768 having been carved out from C.S. Plot No.1392 as well as 2504,

the best option available before the plaintiff was to get a trace map and for that, appointment of Pleader Commissioner is not warranted because of the fact that, that happens to be a table work which could be traced out by having the comparative map prepared that of C.S. as well as R.S. The aforesaid exercise would have been at the end of plaintiff on his own and violation might have examined the Survey Knowing Pleader Commissioner or the person having expertised on that very score to support his assertion that Plot No.363/768 has been carved out from C.S. Plot No.1392 as well as 2504 and such kind of liberty, as the evidence of plaintiff is going on, would be availed by the plaintiff during trial. Accordingly, petition is found devoid of merit and is accordingly rejected.

Having availing supervisory power in terms of Article 227 of the Constitution, it looks desirable to instruct the learned lower court not to entertain defective plaint. However, in the facts and circumstances of the case, the petitioner/plaintiff is given an opportunity to implead State of Bihar in case such prayer is made within four weeks from date of passing of instant order.

(Aditya Kumar Trivedi, J)

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