

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20159 of 2010

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1. Most. Sumari Devi W/O Late Ram Karan Sahni R/O Vill.- Saidpur, P.O.- Saidpur, P.S.- Chakmehsi, Distt.- Samastipur
 2. Sunita Devi D/O Late Ram Karan Sahni R/O Vill.- Saidpur, P.O.- Saidpur, P.S.- Chakmehsi, Distt.- Samastipur
 3. Tara Devi D/O Late Ram Karan Sahni R/O Vill.- Saidpur, P.O.- Saidpur, P.S.- Chakmehsi, Distt.- Samastipur
 4. Raja Ram Sahni S/O Late Ram Karan Sahni R/O Vill.- Saidpur, P.O.- Saidpur, P.S.- Chakmehsi, Distt.- Samastipur
 5. Ram Lalit Sahni S/O Late Ram Karan Sahni R/O Vill.- Saidpur, P.O.- Saidpur, P.S.- Chakmehsi, Distt.- Samastipur
 6. Ram Dayal Sahni S/O Late Ram Karan Sahni R/O Vill.- Saidpur, P.O.- Saidpur, P.S.- Chakmehsi, Distt.- Samastipur
 7. Shiv Chandra Sahni S/O Late Ram Karan Sahni R/O Vill.- Saidpur, P.O.- Saidpur, P.S.- Chakmehsi, Distt.- Samastipur

.... Defendant 1st party- Petitioners
Versus

1. Dr. Sanjiv Kumar Pandey S/O Late Janardan Pandey R/O Vill. And P.O.- Saidpur, P.S.- Chakmehsi, Distt.- Samastipur.
2. Shyam Nandan Pd. Pandey S/O Late Chandrika Pandey R/O Vill. and P.O.- Saidpur, P.S.- Chakmehsi, Distt.- Samastipur

... Plaintiffs-respondent 1st party

3. Ajai Kumar S/O Late Surya Narain Roy R/O Vill.- Sultanpur Morwa Roy Tole, P.O.- Morwa, P.S.- Sarairanjan, Distt.- Samastipur

.... Defendant 2nd party- respondent 2nd party- Respondents

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Appearance :

For the Petitioners : Mr. Jitendra Kishore Verma
For the Respondents : Mr. Surya Narayan Roy

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

3 12-08-2015 Heard Mr. Jitendra Kishore Verma in support of the application and Mr. Surya Narayan Roy for the respondents.

Defendants of Title Suit No. 22 of 2000 have filed the writ application aggrieved by the order dated 5.10.2010 passed by the learned trial judge rejecting the petition filed by the defendants for appointment of Pleader Commissioner to ascertain the physical feature(s) of the suit land particularly to ascertain



whether the suit land is contiguous to the land purchased by the defendant in 1910 through a registered sale deed. The trial court has noted that earlier a Pleader Commissioner was appointed, the report whereof, was submitted whereagainst objection was filed by the defendant which was disposed of on 28.2.2006. From perusal of the said order, it appears the court observed that at appropriate stage of the proceeding such prayer of the petitioner for appointment of Pleader Commissioner shall be considered if need be. It appears the matter travelled to the appellate Court and direction was issued for expeditious disposal of the matter. The suit in this view of the matter proceeded and reached at the stage of argument. The defendant at this stage filed the application (Annexure-1) for appointment of the Pleader Commissioner to enquire and report on the point(s) enumerated therein.

Mr. Verma states that only point for consideration of the Pleader Commissioner as required by the defendant was to inspect and report as to whether the suit land was actually amalgamated with the land of the defendant purchased at least several decades ago. It has been submitted that the trial court rejected the same on two counts. Firstly, the application does not set out the details of land which the defendant had acquired in the year 1910 and secondly, there is earlier Pleader Commissioner report available on record and, as such, no fresh appointment



of Pleader Commissioner is required unless the previous report is not accepted. He has drawn attention of the Court to the impugned order wherein the trial court has noted that the earlier report of the Pleader Commissioner submitted on 31.8.2000 was on different point i.e. present feature of the suit land and the construction(s), if any, made thereon. In the submission of the counsel such ascertainment of fact will help the court in effective resolution of the dispute/controversy as the plaintiff has sought for declaration of title and confirmation of possession and also for recovery of possession if found dispossessed. The case of the defendant is that after purchase of the land in the year 1910 the defendant amalgamated the suit land with the purchased land and exercising rights of possession.

Learned counsel for the respondent-plaintiff, on the other hand, opposed the prayer and contended that the direction may be issued to the Court for quick disposal of the case. The first report of the Pleader Commissioner dated 31.8.2000 has been accepted as valid report as there was no opposition thereto.

On the consideration of the rival submissions, in my view, the trial court ought to have allowed the application of the defendant which would help the court in proper and effective resolution of the controversy as the specific case of the defendant is that the suit land stood amalgamated in the land of the

petitioner which was purchased several decades ago. What will be the effect thereof shall be seen or appreciated by the Court in the light of the report of the Pleader Commissioner. The trial court itself in the impugned order has found that the point/issues on the appointment is sought is not explicit or covered by the earlier report of the Pleader Commissioner.

In view of the discussions made hereinabove, this Court allows the application and permits the petitioners to approach the trial Court for appointment of fresh Survey Knowing Pleader Commissioner for a limited purpose i.e. to ascertain as to whether there is any evidence available on the subject land to show that the same was amalgamated with the land of the plaintiff purchased earlier. On such application being filed the Court shall appoint the Survey Knowing Pleader Commissioner on this limited point only and grant dates/adjournments spanning over three weeks from passing of the order for getting the report of Pleader Commissioner. In case the petitioners default in doing so, the trial court shall proceed further on the basis of the material on record and dispose of the case.

(Kishore Kumar Mandal, J)

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