

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16884 of 2014

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Kavindra Singh

.... Petitioner/s

Versus

Surta Tiwary

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Narayan Mishra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 01-02-2016

Heard the learned counsel for the petitioner.

The learned Munsif II, Buxar by the impugned order dated 29.08.2014 in Title Suit No.15 of 2012 rejected the application filed by he plaintiff-petitioner under Order 26 Rule 10 C.P.C. for appointment of Pleader Commissioner.

From perusal of the impugned order, it appears that Court below found that it is not a case of encroachment and the plaintiff has filed the suit for declaration of title and recovery of possession. The defendant is claiming on the basis of another sale deed but of same land. From perusal of the impugned order, it appears that the parties have not yet started the evidence and/or the plaintiff's evidence is going on.

It is settled principles of law that in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration. The

legal position therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title.

In the present case, the plaintiff has based his title on the registered sale deed. This is not a case of encroachment and according to the Court below, it is not necessary to appoint Pleader Commissioner. Therefore, in exercise of supervisory jurisdiction, the impugned order cannot be interfered with.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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