

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12018 of 2014

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Yugeshwar Baitha, Son of Late Jitan Baitha, Resident of Village -
Fatehullah Chak, P.O. Hussaina Khurd, P.S. Goraul, Sub Division, Mahua,
Distt. - Vaishali

.... Petitioner

Versus

Ram Avtar Singh, Son of Late Rupan Singh, Resident of Vill. - Hussaina
Khurd, P.S. Goraul, Sub Division, Mahua, Distt. - Vaishali

.... Respondent

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Appearance :

For the Petitioner : Mr. Birendra Nath Mishra, Advocate

For the Respondent : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 16-08-2016

Heard Mr. Birendra Nath Mishra learned counsel

appearing on behalf of the petitioner.

The defendant is the petitioner in this application under Article 227 of the Constitution of India assailing the impugned order passed by the learned court below turning down the prayer for appointment of a Pleader Commissioner for local inspection of the suit land which the defendant has claimed to be in his possession.

From the materials on record as well as submissions on behalf of the petitioner, it is manifest that the suit has been filed by the plaintiff for declaration of title over the suit land. There is no relief sought by the plaintiff either for confirmation of possession or recovery of possession. The defendant has claimed his rival title over the part of the suit land. Both the plaintiff and



the defendant in the suit have claimed their title on the basis of their settlement. The defendant-petitioner during the pendency of the suit also filed a petition under Order 39, Rule 1 and 2 of the Code of Civil Procedure praying for restraining the plaintiff from interfering with the possession of the defendant over the suit land. The defendant-petitioner further filed a petition praying for appointment of a Pleader Commissioner for making a local inspection particularly in view of the pendency of the injunction petition of the defendant. The learned court below by the impugned order has rejected the prayer holding that the Pleader Commissioner cannot be appointed for collection of evidence on behalf of the parties.

It is evident from the impugned order that the issues in the suit were not framed on the date when the impugned order has been passed and further the injunction petition filed by the defendant was also pending. It is also evident that as the suit has been filed only for declaration of title, only the same is to be determined in the suit on the basis of the evidence led on the behalf of the parties.

In this backdrop, this Court finds that the learned court below has not committed illegality and irregularity in passing the impugned order rejecting the prayer of the defendant-

petitioner.

The petition is, accordingly, dismissed.

(V. Nath, J)

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