

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.28 of 2016**

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Pintu Sah & Ors

.... Appellant/s

Versus

Smt. Anita Devi & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anant Kumar-1

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

2 21-06-2016

Heard the learned counsel, Mr. Sudhir Kumar, for the petitioner.

Perused the impugned orders.

It appears that the plaintiff respondent filed suit for specific performance of contract alleging that there was agreement between the plaintiff and the defendant No.1 in the year 2005. After agreement, the defendant petitioners have purchased the property. It may be mentioned here that the defendant No.4 was added as defendant No.5 in the year 2010. Subsequently, application was filed by the petitioners in the Court below for appointment of pleader commissioner for giving report on the point No.(i) whether the entire suit land is fenced containing several houses and several trees etc. (ii) Whether the entire suit land is fenced with six feet height pillars covered with barbet wire or not (iii) Whether the suit land contains several houses and several trees or not and if so the number of houses typed of construction and its breath in details as well as number of trees and kinds of trees in details (iv) Whether the suit land contains an iron boarding so or not? (v) Whether

the suit land contains also Darwaja, Bamboo clumps pucca latrine. (vi) Whether the houses existing are residential or vacant? (vii) Complete physical features of suit land.

By the impugned order dated 06.02.2016, the Court below has rejected this application. After rejection, review application was filed which was again rejected by order dated 17.03.2016. Both these orders have been sought to be quashed by this Civil Misc. Case under Article 227 of the Constitution of India.

It is admitted fact that the suit is specific performance of contract filed by the plaintiff. Therefore, the issue to be decided in suit for specific performance is whether there was genuine agreement between plaintiff and defendant No.1 and whether the plaintiff was always ready and willing to perform his part of the contract or not and other related issues.

So far the point for which the appointment of pleader commissioner is sought for are not at all relevant for deciding the issues which is involved for deciding the suit for specific performance of contract. Therefore, the Court below has rightly rejected the application.

Thus, this writ application is dismissed.

Sanjeev/-

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(Mungeshwar Sahoo, J)