

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14741 of 2013

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Sabir Hussain Son Of Late Sadruddin, Resident Of Mohalla- Garariya Khand, Near
Gabripar, P.S.- Jehanabad, District- Jehanabad.

.... Petitioner/s

Versus

Najruddin Mian @ Najo Mian Son Of Late Wahid Mian Resident Of Mohalla-
Garariya Khand, Near Gabripar, P.S.- Jehanabad, District- Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravi Bhushan Kumar, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 08-12-2016

Heard learned counsel for the petitioner.

By the impugned order, the learned court below has
accepted the prayer on behalf of the defendant for appointment of Non
Survey Knowing Advocate Commissioner in the facts and
circumstances of the case.

By earlier order dated 31.10.2013 in this application, the
interim order for stay of the proceeding of the suit was passed in view
of the submission on behalf of the petitioner that after appointment
and report by a Survey Knowing Pleader Commissioner, now a non-
Survey Knowing Pleader Commissioner has been appointed by the
impugned order. However, during the course of submission, learned



counsel for the petitioner has accepted that the said submission was actually wrong as earlier also a Non Survey Knowing Advocate Commissioner was appointed and by the impugned order also another Non Survey Knowing Advocate Commissioner has been appointed. Learned counsel for the petitioner, however, could not explain the circumstances under which the aforesaid submission was made before this Court while praying for stay of further proceeding of the suit which was granted apparently on that basis.

After considering the submissions and materials on record, it transpires that a Non Survey Knowing Advocate Commissioner was earlier appointed in the suit which has been filed by the plaintiff-petitioner for declaration of his easementary right over the suit property. After submission of the report by the said Pleader Commissioner, an objection was filed by the defendant to the said report and the prayer was also made for appointment of another Non Survey Knowing Advocate Commissioner. The learned court below has accepted the prayer made on behalf of the defendant and has directed for appointment of another Non Survey Knowing Advocate Commissioner. In view of the provision as contained in Order 26 Rule 10, the report of the Pleader Commissioner is only an evidence in the suit and parties have the right to question the correctness of the said report during the course of hearing.



In this view of the matter, this Court is not inclined under Article 227 of the Constitution of India to interfere in the impugned order. The application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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