

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13932 of 2014

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Sri Anil Kumar Gupta S/o late Madan Kishore Prasad, R/o Mohalla- Mithapur,
P.S.- Jakanpur, District- Patna Petitioner

Versus

1. Sri Anil Kumar, S/o late Rajendra Prasad, R/o Mohalla- Mithapur, P.S.-
Jakanpur, District- Patna
2. Sri Alok Kumar Gupta, S/o Madan Kishore Prasad, R/o Mohalla- Mithapur, P.S.-
Jakanpur, District- Patna Respondents

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Appearance :

For the Petitioner/s : Mr. Prakash Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 06-10-2016

Heard the learned counsel for the petitioner and
the learned counsel for the respondents.

This application has been filed against the order
passed by the appellate court below in appeal, against the order
refusing the injunction as prayed by the plaintiff in the suit by the trial
court. The appellate court below, in the impugned order, has affirmed
the findings of the trial court and dismissed the appeal.

The learned counsel for the petitioner has
submitted that the learned court below ought to have appointed a
pleader commissioner for taking measurement of land and it has also
been prayed that some observation in this regard be made by this
Court. The learned counsel for the petitioner has also placed the
impugned order passed by the appellate court below in order to
persuade this Court to take a different view in the matter.

Mr.J.S.Arora, learned senior counsel for the

respondents has supported the impugned order.

After considering the submissions and perusal of the orders passed by both the courts below, this Court finds that the matter has been concluded by concurrent finding of fact in the injunction matter by both the courts below, where it has also been pointed out that the plaintiff has not approached the court with clean hands. It does not appear from the material on record that the plaintiff ever made any prayer for appointment of a pleader commissioner for local inspection or measurement of the suit land. In view of the dictum as laid down by the apex court in the case of ***The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad Vs. Ajit Prasad Tarway, Manager (Purchase and Store) Hindustan Aeronautics Ltd. Balanagar , Hyderabad, AIR 1973 SC 76*** and in the case of ***The Municipal Corporation of Delhi Vs. Suresh Chandra Jaipuria , AIR 1976 SC 2621***, this Court is not inclined to interfere in the impugned order as the findings have been recorded on the consideration of the materials on record and there is no perversity or unreasonableness in any manner in the same.

This application is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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