

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7247 of 2012

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1. Shaligram Mandal Son Of Late Prayag Mandal Resident Of Village - Shankerpur, Bihla Tola, Post- Raghapur, Police Station - Parbatta, District - Bhagalpur
 2. Nand Kishore Mandal Son Of Late Prayag Mandal Resident Of Village - Shankerpur, Bihla Tola, Post- Raghapur, Police Station - Parbatta, District - Bhagalpur

.... Petitioner/s

Versus

Mostt.Saguna Devi Wife Of Late Rupam Mandal Resident Of Village - Chhoti Shankerpur, Bihla Tola, Post - Raghapur, Police Station - Parbatta, District- Bhagalpur

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Ashok Kumar Mallick, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

7 12-08-2016 Heard learned counsel for the petitioners as well as learned counsel for the respondent.

Though at an initial stage petitioner had challenged two orders which are independent to each other under present petition but during course of argument, confine to the order dated 16.02.2012 passed by learned lower court in connection with Title Suit No.33 of 2010 whereby and whereunder petitioners/defendants objection over the pleader commissioner's report who was appointed at the behest of the respondent/plaintiff and further was not properly considered directing the petitioners/defendants to have the same eventuality at his end at an appropriate stage if so chooses.



Learned counsel for the petitioners has submitted that an objection was filed against the pleader commissioner's report on behalf of defendant, then in that event, the aforesaid objection should have been considered whereupon, the report submitted by the pleader commissioner should have been rejected. Learned counsel for the petitioners has referred 2007 (3) PLJR 719.

Learned counsel for the respondent/plaintiff objected the same.

Gone through the order impugned along with relevant annexures. From Annexure-4, it is evident that respondent/plaintiff had filed petition for appointment of commissioner to verify whether the houses of the plaintiff was standing over the portion of the suit land along with Bari whereupon objection was raised vide Annexure-5. But same was allowed which never been challenged. Annexure-6 is writ issued to the pleader commissioner and Annexure-6/1 is the report submitted by the pleader commissioner. From perusal of the same, it is evident that though respective learned counsels were not at all present however respective parties were present and at their instance the disputed land has been traced out and topography thereof has been given. Because of the fact that the pleader commissioner was not a survey knowing pleader commissioner on account thereof, the

length, width, the survey plot number are lacking. Objection has been raised on behalf of petitioners/defendant whereupon, by the order impugned the learned lower court had given a liberty to the petitioner/defendant that in case he so desires may indulge in similar activity and that happens to be the appropriate step to be take up and rightly been granted by the learned lower court.

The citation having been made on behalf of petitioners is not at all applicable in the facts and circumstances of the present case because of the fact that in the aforesaid decision, pleader commissioner was appointed at the end of the plaintiff. After submission of pleader commissioner's report it was the plaintiff who had objected over reliability of the pleader commissioner's report. Therefore, instant petition is found devoid of merit and is accordingly rejected.

(Aditya Kumar Trivedi, J)

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