

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20438 of 2013

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Shiv Nandan Prasad Sinha, Son of Late Brij Nandan Prasad Ambasta,
Resident of Mohalla- Nai Sarai Town, P.O. & P.S. Bihar Sharif, Distt.-
Nalanda

.... Petitioner

Versus

1. Jai Nandan Prasad Sinha, Son of Late Brij Nandan Prasad Ambasta,
Resident of Mohalla- Nai Sarai Town, P.O. & P.S.- Bihar Sharif,
District- Nalanda
2. Raj Nandan Prasad Sinha, Son of Late Brij Nandan Prasad Ambasta,
Resident of Mohalla- Nai Sarai Town, P.O. & P.S.- Bihar Sharif,
District- Nalanda

.... Respondents

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Appearance :

For the Petitioner : Mr. Shyam Bihari Prasad, Advocate

For the Respondents :

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-12-2016

Heard learned counsel for the petitioner.

Learned counsel for the respondents is present.

The petitioner is aggrieved by the impugned order by which the learned court below has rejected his objection to the report of the Pleader Commissioner submitted under Order 26 Rule 14 of the CPC for the purpose of carving out separate share of the parties.

The learned counsel for the petitioner has made his submission on merits of the case as well as also in support of the I.A. No. 9129 of 2016 filed for stay of the operation of the impugned order dated 02.08.2012. It has been contended that the learned court below



has not properly considered the objections raised by the petitioner against the report of the Pleader Commissioner. The objections as raised by the petitioner have been placed before this Court by the learned counsel for the petitioner in order to persuade this Court that the Pleader Commissioner has not allotted the share in the suit property to which the petitioner is entitled. It has also been canvassed that the main dispute is with regard to a passage in the suit property. The learned counsel has also contended that this Court can exercise its jurisdiction under Article 227 of the Constitution of India, even though the petitioner has remedy by way of filing an appeal against the final decree which shall eventually be prepared after the objections to the report of the Pleader Commissioner report have been rejected.

After considering the submissions and materials on record, it is manifest that after the preliminary decree having been passed in the partition suit, the learned court below has appointed a Pleader Commissioner for the purpose of Takhtabandi under order 26 Rule 14 CPC. After submission of the report by the said Pleader Commissioner, the petitioner raised his objection to the report. From the impugned order, it transpires that the learned court below after hearing the parties and considering the objections has come to the conclusion that the report has been submitted scientifically and in accordance with law allotting almost equal shares to all the parties. It



further also transpires that the learned court below has directed the plaintiff to file necessary stamp for preparation of final decree.

Learned counsel for the petitioner however submitted that no final decree up till now has been prepared. The law has been already settled that in a final decree proceeding after rejection of the objection by the report of Pleader Commissioner an appeal lies against the final decree to be prepared on the basis of the said report. The petitioner has got alternative remedy by way of filing an appeal against the decree which might have been prepared or eventually be prepared in the suit. This Court is thus not inclined under Article 227 of the Constitution of India to exercise its jurisdiction for interdicting the impugned order.

The application, accordingly, is dismissed. However, this order shall not prejudice the case of the petitioner in appeal against the final decree.

(V. Nath, J.)

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