

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4165 of 2013

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1. Most. Mariam Khatoon Wife of Late Mokhtar Ahmad.
 2. Gausul Ajam @ Gausul Ajam Khan.
 3. Jana Alam.
 4. Mahmud Hasan all Sons Of Late Mokhtar Ahmad.
 5. Bibi Hussain Tau Daughter Of Late Mokhtar Ahmad all Resident of Village Malahi, P.O. Khajuri, P.S. Kuchaikot, District Gopalganj.

.... Petitioner/s

Versus

Jahid Khan Son of Late Taiyyab Khan Resident of Village Malahi, P.O. Khajuri, P.S. Kuchaikot, District Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Prasad, Adv.

For the Respondent/s : Mr. Pankaj Kumar Dubey, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

4 25-01-2016

Heard learned counsel for the parties.

Assailing the impugned order by which the learned court below has disposed of the objection filed by the defendant-petitioners to the report of the Survey Knowing Pleader Commissioner observing that the said report shall be the part of the record and shall be evaluated and considered along with other evidence, the present application under Article 227 of the Constitution of India has been filed.

It is not in dispute that a Survey Knowing Pleader Commissioner was appointed by the court below for local inspection and measurement of the suit land in the suit which was



filed for declaration of title and recovery of possession on the allegations of encroachment. The said Survey Knowing Pleader Commissioner submitted his report and the defendants filed their objections to the said report with the prayer that the report be set aside. The learned court below has held that the said report shall be the part of the record in the suit and shall be considered along with the other evidence in the suit.

The learned counsel for the petitioners has submitted that the learned court below has committed error of jurisdiction in not passing the order for setting aside the report of the Survey Knowing Pleader Commissioner as prayed by the petitioners and has committed error of jurisdiction thereby. The reliance has been placed on the decision in the case of **Jagdish Bhagat Vs. Sri Baijnath Rai 2007 (3) PLJR 719**. The learned counsel has further also placed reliance on the decision in the case of **Dr. T. Nandagopal Vs. State of Andhra Pradesh A.I.R. 1988 A.P. 199** for submission that the report of the Survey Knowing Pleader Commissioner can be the part of the record only after his examination in the suit. The learned counsel, however, has also accepted that though the petitioners have not prayed for examination of the Survey Knowing Pleader Commissioner in the suit, they may be given liberty to file petition making the said

prayer.

The learned counsel for the respondent has supported the impugned order but has also raised no objection to the prayer of the petitioners for liberty to file petition before the learned court below for examining the Survey Knowing Pleader Commissioner in the suit.

After considering the submissions and the facts and circumstances of the case, it is manifest that the Survey Knowing Pleader Commissioner has submitted his report before the court and in view of the provision of Order 26 Rule 10 (2) C.P.C. the said report becomes the part of the record and evidence in the suit. The decision of this Court in the case of **Jagdish Bhagat Vs. Sri Baijnath Rai 2007 (3) PLJR 719** has been rendered in the case where the Survey Knowing Pleader Commissioner was appointed under the provision of Order 26 Rule 14 C.P.C. in a final decree proceeding for making partition and therefore the said decision is clearly distinguishable on the facts. It therefore appears that the learned court below has committed no error of jurisdiction or illegality in holding that the report of the Survey Knowing Pleader Commissioner shall become the part of the record of the suit and disposing of the objection filed by the petitioners with observation that the said report shall be considered along with

other evidence in the suit. This Court, therefore, is not inclined to interfere with the impugned order.

This writ application is, accordingly, dismissed with liberty to the petitioner as prayed to which no objection has been raised by the learned counsel for the respondent for making prayer before the learned court below for examining the Survey Knowing Pleader Commissioner in the suit, and if such application is filed the same shall be considered by the learned court below in accordance with law.

(V. Nath, J)

Devendra/-

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