

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3677 of 2013

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1. Md. Moinul Haque Son Of Late Md. Shamsul Haque Resident Of Mohalla - Milki Anaith P.S. Arrah Nawada District - Bhojpur

.... Petitioner/s

Versus

1. Mansoor Alam Son Of Late Rabiuddin Alam Resident Of Mohalla - Milki Anaith, P.S. - Arrah Nawada, District - Bhojpur
2. Mahboob Alam Son Of Late Leyakt Ali Resident Of Mohalla - Milki Anaith P.S. Arrah Nawada District - Bhojpur

.... Defendants -Respondents

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Appearance :

For the Petitioner/s : Mr. Md. Ataul Haque

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

4 06-01-2016

Heard the counsel for the petitioner.

In spite of notice no one has appeared on behalf of the defendants-respondents.

The plaintiff of Title Suit no. 117 of 2004 is the petitioner. The suit was filed for removal of encroachment on schedule 2 and schedule 3 land of the plaintiff and also for grant of permanent injunction. On request of the plaintiff-petitioner a Pleader Commissioner was appointed. The Pleader Commissioner submitted the report on 18.8.2012 to which the plaintiff-petitioner filed an objection. The Pleader Commissioner was also cross-examined. The learned Trial Court under the impugned order dated 22.1.2013 has allowed the report to be kept on record.

Counsel for the petitioner submits that the Pleader Commissioner in course of his cross examination has stated that he did not measure the disputed land. These are the matters, in my view, which can be considered at the time of final arguments in the pending case. Merely accepting the report of the Pleader Commissioner, in my view, does not give a cause of action to the petitioner to approach this Court under Articles 227 of the Constitution of India. It will be open to the petitioner to make submission(s) at the time of arguments of the case. The suit having been filed in 2004 is still pending before the trial Court. Considering the above, this Court declines to invoke its extraordinary and discretionary writ jurisdiction to set aside the impugned order. The writ application is dismissed.

(Kishore Kumar Mandal, J)

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