

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9642 of 2014

=====

Anil Kumar Azad S/o Rambalak Prasad Gupta R/o Moh. Purbi Dahiyawan,
Jagdamba Road, P.S- Chapra Nagar, District- Saran.

.... Petitioner.

Versus

1. Baleshwar Prasad
2. Shankar Jee
3. Dinesh Kumar
4. Sanjay Kumar
5. Digambar Prasad All Son sof Late Gopaljee Prasad
6. Swami Shardanand
7. Rajnish Basisth Both sons of Late Rameshwar Prasad All resident of Mohalla Purbi Dahiyawan, Jagdamba Road, P.S Chapra Nagar, District- Saran.
8. Parsuram Prasad S/o Late Bhrigu Prasad
9. Ashok Byahoot S/o Late Ramji Prasad
10. Chinta Devi W/o Ganesh Singh null
11. Ganesh Singh S/o Late Ram Nagina Singh null
12. Surendra Manjhi S/o Late Ramsharan Manjhi
13. Saroj Devi W/o Late Birendra Manjhi
14. Vikash
15. Aman Both minor Son of Late Birendra Manjhi care of Madar Boli and Shubchintak Saroj Devi.
16. Durgawati Devi W/o Late Jeevan Ram
17. Munna Manjhi S/o Late Dukhit Ram
18. Ram Ishwar Manjhi S/o Late Brij Mohan Ram
19. Sushila Devi W/o Late Ram Ayodhya Ram All residents of Mohalla- Purbi Dahiyawan, Jagdamba Road, P.S- Chapra Nagar, Distt- Saran.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Nawal Kishore Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 16-05-2016

V.Nath, J.

Heard the learned counsel for the petitioner.

Challenging the impugned order by which the

learned court below has allowed the prayer for appointment of survey

knowing pleader commissioner for taking measurement of the suit

land and the extent of encroachment therein, the present application has been filed on behalf of the defendant under Article 227 of the Constitution of India.

From the materials on record, it is apparent that the suit has been filed by the plaintiff for declaration of title and removal of encroachment alleged to have been made by the defendant over the suit land. During the pendency of the suit the plaintiff filed the petition for appointment of a survey knowing pleader commissioner for ascertaining the extent of encroachment made by the defendant. The said petition is on record as Annexure-3 to this application. The defendant filed the rejoinder to the said petition and contested the prayer of the plaintiff for appointment of a survey knowing pleader commissioner as prayed. By the impugned order the learned court below, however, has allowed the prayer of the plaintiff for appointment of survey knowing pleader commissioner.

From the facts as apparent from the plaint and the petition filed for appointment of the survey knowing pleader commissioner, it is clear that the suit has been filed for declaration of title and removal of encroachment. It is well settled by now that in a suit for removal of encroachment, the appointment of survey knowing pleader commissioner is considered necessary in order to ascertain the nature and extent of encroachment as alleged by the plaintiff. It does not

appear as to how the defendant-petitioner would be aggrieved if the survey knowing pleader commissioner is appointed for making local inspection with regard to the nature and extent of encroachment said to have been made by the defendant. In that view of the matter, this Court finds that no illegality or material irregularity has committed by the learned court below in passing the impugned order.

The application is , accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.06.2016
Transmission Date	NA