

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8050 of 2014

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Gayasuddin

.... Petitioner/s

Versus

Md. Jamaluddin & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kaushal Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 24-02-2016

Heard learned counsel, Mr. K.K. Singh, appearing on behalf of the petitioner.

2. By the impugned order dated 29.01.2014, the learned Munsif- IIInd, Begusarai rejected the application filed by the defendant-petitioner under Order 26 Rule 9 of the Code of Civil Procedure in T.S. No. 56 of 2005.

3. It appears that the plaintiff-respondent filed the aforesaid suit for declaration of title/ recovery of possession over schedule-D property on the ground that they have purchased by the registered sale deed dated 27.10.1959. Entire Schedule-C is purchased by the plaintiffs whereas they have been dispossessed by the defendant from Schedule -D i.e. part of schedule-C. The defendants filed contesting written statement alleging that they are the real owner of the property and are continuing in possession and they have also constructed house.



4. Thereafter petitioners filed application for appointment of Survey Knowing Pleader Commissioner, which has been rejected by the court below. The application filed by the petitioner has been annexed as annexure-1 to the writ application. The prayer has been made for appointment of Survey Knowing Pleader Commissioner alleging that configuration of schedule-C land of the plot and in whose possession the schedule-C land exists, therefore, for the purpose of elucidating the matter in issue, an investigation by appointing Survey Knowing Pleader Commissioner is highly required.

5. It may be mentioned here that both the parties are claiming possession. The plaintiff is claiming title on the basis of registered sale deed and has also prayed for recovery of schedule-D property. The defendants are also claiming possession over schedule-C property, therefore, it is not the case of any party that there is dispute regarding identity of the suit land. According to the plaintiff in the sale deed, the properties have been described, which has been purchased by them and the properties have been specified in the schedule of the plaint to which the defendants are denying.

6. In such circumstances, the question that which party is in possession is to be decided by the court on the basis of

evidence and for deciding due question also to which party is in possession. This power cannot be delegated by the court to Survey Knowing Pleader Commissioner, for which, the application was filed. Thus, the court below has rightly rejected the application. As such, no case for interference is made out. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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