

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.125 of 2016

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Arvind Kumar Singh & Anr

.... Appellant/s

Versus

Smt. Pushpa Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arvind Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 26-08-2016

Heard Mr. Janardan Prasad Singh, learned Senior
Counsel for the petitioner.

Perused the order dated 17.3.2016, passed by the Sur-
ordinate Judge-I Siwan in Title Suit No. 51 of 2015 whereby the
learned court below rejected the application filed by the plaintiff-
petitioner under Order 26 Rule 9 CPC for appointment of pleader
Commissioner recording a finding that the application has been
filed only with intention to collect additional evidence and it does
not appear to be essential in the ends of justice.

It appears that the plaintiff-petitioner filed the
aforesaid suit for declaration of title on schedule no. III of the
plaint on the basis of the sale deed said to have been executed by
defendant nos. 2 and 3 in favour of the plaintiff on 18.6.2011 and
further prayed that the defendants no.1 is the owner of schedule
no. II of the plaint which is adjacent west to schedule no.3 as they

have purchased the same by registered sale deed dated 27.08.2010.

In view of the relief claimed by the plaintiff, the sale deed is the basis for claim of title. The property over which the plaintiff is claiming title has been fully described in schedule III. The prayer has been made for declaration of title with respect to schedule III property.

Learned Senior counsel Mr. Janardan Prasad Singh, relied upon decision of this court in the case of Ram Shankar Singh, Vs. State Bank of India 2005 (2) PLJR, 524 submitted that the court below should exercise jurisdiction judiciously but the court below only rejected the application on the ground that the application has been filed for collecting evidence.

From perusal of the decision relied upon by the learned Senior counsel for the petitioner, it appears that it was an eviction suit and property was purchased in auction by the plaintiff and therefore, this court held that it is quite natural that the plaintiff might not be aware of the full configuration of the suit premises.

So far as the other decision relied upon by the learned Senior counsel rendered in AIR 1988 Orissa, 248 (Mahendranath Parida Vs. Purnananda Parida) is concerned, it may be mentioned here that in this case also the Orissa High Court held that when the

controversy is as to identification, location or measurement of the land or premises or object, local investigation should be done at an early stage.

In view of these decisions it is clear that there can not be any straight jacket formulae that whenever an application is filed under Order 26 Rule 9 CPC it should be allowed without considering local investigation to be proper for the purpose of elucidating any matter in issue. It depends on the facts and circumstances of each case. Since the plaintiff is praying for declaration of title with respect to schedule 3 property in the present case and there is no dispute regarding the identity of the suit property, the burden is on the plaintiff to prove his case and therefore, the court below has rightly rejected the application.

I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Thus, this civil Miscellaneous Application is dismissed.

siddharth/-

(Mungeshwar Sahoo, J)

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