

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10558 of 2014

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1. Kailash Bihari Pandey
 2. Tarkeshwar Pandey
 3. Ramji Pandey
 4. Bidyabhushan Pandey
 5. Sanjay Kumar Pandey Sons of Late Ramanand Pandey
 6. Sashi Kant Pandey
 7. Anil Kumar Pandey
 8. Sunil Kumar Pandey Sons of Late Banarjee Pandey All are Resident of Village Churamanpur, P.S- Buxar (Industrial), District- Buxar.

.... Petitioners

Versus

1. Srimati Pandey @ Srimati Devi Widow of Late Akshay Kumar Pandey
2. Ramashankar Pandey
3. Dhanjee Pandey Sons of Late Akshay Kumar Pandey All are resident of Village Churampanpur, P.S- Buxar (Industrial), District- Buxar.
4. Sarswati Devi Wife of Sri Bhagwan Pandey Resident of Village- Bandka Rajpur, P.S- Simri, District- Buxar.
5. Shanti Devi Wife of Chandra Kant Upaadyay resident of Village- Birpur, P.S- Bhawar Coal, District- Gajipur (U.P)
6. Ramavtar Pandey Son of Late Vishwanath Pandey
7. Abhishek Gaurav Pandey
8. Gaurav Shankar Pandey Son of Late Ramanjee Pandey
9. Shobha Devi Widow of Late Ramanjee Pandey
10. Shiv Jee Pandey
11. Uday Shankar Pandey
12. Ghanshyam Pandey Sons of Ramavtar pandey All are Resident of village- Churamanpur, P.S- Buxar (Industrial), District- Buxar.
13. Banke Bihari Pandey
14. Krishna Bihari Pandey
15. Sugandh Pandey Son of late Ram Sundar Pandey All are Resident of village- Churamanpur, P.S- Buxar (Industrial), District- Buxar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Satya Ranjan Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 04-07-2016

Heard Mr.Kamla Prasad Rai, the learned

counsel appearing on behalf of the petitioners.

By the impugned order the learned court below

has directed for appointment of a new pleader commissioner in view of the fact that the earlier pleader commissioner who made the local inspection and submitted his report is dead.

Mr. Rai, has submitted that the suit has been filed for removal of encroachment and earlier a pleader commissioner was appointed by the court on the prayer of the plaintiff. It has been further submitted that the said pleader commissioner has submitted his report to which the defendant filed objection but did not press the said objection and ultimately after lapse of 5 years the said objection was rejected. It has further been pointed out that the prayer for recall of the said order was also rejected and the same was challenged by the defendant before this Court by filing writ application but the said order was not interfered with by this Court but the liberty was granted to the defendants to adduce their own report in evidence if their evidence was not closed. The learned court below, it has been argued, has committed error in law in allowing the prayer for appointment of another pleader commissioner in the facts and circumstances of the case.

After considering the submissions and the perusal of the impugned order, it is apparent that the pleader commissioner who earlier made the local inspection and had

submitted his report died subsequently and therefore could not have been examined to prove his report. In this backdrop, the learned court below has issued the direction for appointment of a new pleader commissioner. This Court thus finds no error of jurisdiction or illegality in the impugned order.

The application is dismissed with liberty to the petitioner to bring all relevant and necessary facts to the notice of the pleader commissioner at the time of local inspection.

(V. Nath, J)

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