

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16005 of 2015

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1. Rudra Narayan Yadav Son of Late Bambhola Prasad Yadav resident of village - Jajhat Sabaila, P.S. Singheshwar, District - Madhepura

.... Petitioner/s

Versus

1. The State of Bihar through D.M. and Collector, Madhepura
2. The Circle officer, Singheshwar, Madhepura
3. The Mukhiya, Jajhat Sabaila, village Panchayat, P.S. Singheshwar, District - Madhepura
4. Manager Yadav Son of Late Chethru Yadav resident of village - Majarhat, P.S. - Singheshwar, District - Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bidhanesh Misra

For the Respondent/s : Mr. Gp14- M.K. Ambastha

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 28-01-2016 Heard learned counsel, Mr. Bidhanesh Mishra, appearing on behalf of the petitioner as well as learned A.C. to G.P.-14 appearing on behalf of the respondents-State.

This application, under Article 227 of the Constitution of India, has been filed by the plaintiff-petitioner against the order dated 04.09.2015 passed by the Additional Munsif, Madhepura in T.S. No. 144 of 1996, whereby the court below rejected the application filed by the petitioner under Order 26 Rule 9 C.P.C. for appointment of Pleader Commissioner.

The learned counsel for the petitioner submitted that earlier, in the year 2006, the application was allowed and the

petitioner was directed to deposit the cost of Pleader Commissioner but by mistake, it could not be deposited, therefore subsequent application was filed and for ends of justice, it is necessary to appoint Pleader Commissioner.

On the other hand, learned counsel appearing for the State submitted that, in fact, the evidences of both the parties have been closed and, now, the case has been fixed for arguments.

Perused the order passed by the court below. The learned court below has clearly held that earlier application for appointment of Pleader Commissioner was allowed but the petitioner intentionally did not deposit the cost of Pleader Commissioner and after closure of the evidence of both the parties, when the case has been fixed for argument, another application has been filed for appointment of Pleader Commissioner. Although the plaint has not been annexed with the writ application, at the time of hearing of the writ application, the learned counsel for the petitioner placed a copy of the plaint before this Court. From perusal of the plaint, it is clear that the petitioner has filed the suit in the representative capacity praying for relief to the effect that the court may be pleased to pass a decree for declaration of right of easement of the villagers and for setting aside the order of S.D.O. and L.R.D.C., by which, the lands

have been settled to the private respondents herein. Now, therefore, the only dispute, which is to be decided by the court below, is whether the plaintiff has a right of easement on the suit property or not. It is settled principle of law that the burden always lies on the plaintiff to make out and establish a clear case for granting such relief.

Considering the nature of the relief claimed by the plaintiff, in my opinion, the Pleader Commissioner's report is not at all necessary. The easementary right claimed by the plaintiff pre-supposes that the title is on the third person and the plaintiff has to prove the easementary right only. In such circumstances, the Pleader Commissioner has no role to play. Therefore, the order passed by the court below needs no interference in supervisory jurisdiction under Article 227 of the Constitution of India. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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