

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10914 of 2014

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1. Birendra Kumar Son of Ram Chandra Prasad
2. Manoj Kumar Son of Ram Prit Prasad Both resident of village Majlish Prannath @ Kharhar, P.S. Minapur, P.O. Kharhar Rampur Hari, District- Muzaffarpur
..... Petitioners

Versus

1. Keshari Kishore Sharma
2. Sri Nivash Sharma Both sons of Late Jagdish Narain Sharma @ Jagdish Singh Residents of village and P.O. Rampur Hari, P.S. Minapur, District- Muzaffarpur
3. Satrugan Sahni Son of Del Nandan Sahni Resident of village Gosainpur Tengrahan, P.O. Tengrahan Via Rampur Hari, P.S. Minapur, District- Muzaffarpur
4. Smt. Manju Devi wife of Deep Narain Prasad of village Majlesh Prannath @ Kharhar, P.S. Kharhar Via Rampur Hari, P.S. Minapur, District- Muzaffarpur
5. Manipat Prasad Son of Late Kaleshwar Prasad resident of village Majlesh Prannath @ Kharhar, P.O. Kharhar, Via Rampur Hari, P.S. Minapur, District- Muzaffarpur
6. Raj Mangal Ram Son of Late Ram Briksh Ram
7. Bhajan Ram Son of Harilal Ram
8. Shyam Babu Prasad
9. Mukesh Kumar Both sons of Mahendra Prasad All resident of village Majlesh Prannath @ Kharhar, P.O. Kharhar, Via Rampur Hari, P.S. Minapur, District- Muzaffarpur
10. Ram Balak Rai Son of Rajendra Rai
11. Lalan Rai son of Late Haruni Rai, Respondent No. 10 and 11 of village Majesh Madho @ Chhapra, P.O. Rampur Hari, P.S. Minapur, District- Muzaffarpur
..... Respondents

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Appearance :

For the Petitioner/s : Mr. Arun Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-07-2016

V.Nath, J.

Heard the learned counsel for the petitioners.

The learned counsel for the petitioners is permitted to make correction in the provision of law in the main application.

Questioning the legal acceptability of the impugned order by which the learned court below has turned down the prayer of the plaintiff-petitioners for appointment of a pleader commissioner for local inspection of the suit land, the present application under Article

227 of the Constitution of India has been filed.

From the averments made in the application as well as the submissions on behalf of the petitioners, it is manifest that the suit has been filed by the plaintiff-petitioners for specific performance of contract for sale of the suit land. It is the case of the plaintiffs that there has been an agreement for sale with the defendant 1st set for the suit land which also included standing trees thereof. However, it has been the further case of the plaintiffs that the subsequent purchasers of the suit land from the defendant 1st set have been felling down the trees standing over the suit land and in this backdrop the prayer for appointment of a pleader commissioner for finding out the existing position regarding the trees as well as the physical feature of the suit land has been made. The learned court below by the impugned order has held that no right , title, interest or charge upon the land subject matter of contract is created on the basis of an agreement for sale and therefore has declined to allow the prayer of the petitioners.

The learned counsel for the petitioners has submitted that as the trees standing over the suit land are being cut down by the subsequent purchasers, therefore, it is necessary that the said fact should be ascertained through a pleader commissioner. It has however been submitted that the prayer for injunction is also pending for consideration.

After considering the submissions and perusal of the

impugned order, it is manifest that the plaintiffs’ case is based upon a contract for the purchase of the land alongwith the tress standing thereupon. It has been accepted during the course of submission that the description and number of those trees find mentioned in the contract for sale as well as in the plaint. In this backdrop, this Court does not find that the learned court below has committed any error of jurisdiction or material irregularity in turning down the prayer on behalf of the plaintiff-petitioners for local inspection only to ascertain the fact regarding felling down the tress by the subsequent purchasers. The provision of Order 26 Rule 10 C.P.C. is not meant for collection of evidence on behalf of any of the parties who are enjoined to establish their case by leading their own appropriate and cogent evidence. In any view of the matter, when the prayer for injunction is still pending before the court below by the petitioners, this Court is not inclined to interfere in the impugned order by invoking the jurisdiction under Article 227 of the Constitution of India.

The application is accordingly dismissed.

However, any observation made in this order shall not prejudice the case of the petitioners at any stage.

(V. Nath, J)

Nitesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	