

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12968 of 2013

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Niranjan Prasad Sinha S/O Sri Ramchandra Prasad Resident Of Village+
P.O+ P.S- Karaiparsuraj, District- Nalanda.

.... Petitioner/s

Versus

1. Kaushal Kishore Prasad S/O Ramchandra Prasad.
2. Pravin Kumar.
3. Rahul Kumar both S/O Kaushal Kishore Prasad.
4. Ramchandra Prasad S/O Late Bandhu Mahto.
5. Parwati Devi W/O Ramchandra Prasad.
6. Kumar Gaurav.
7. Akash Gaurav both S/O Niranjan Prasad Sinha all Resident Of Village+
P.O+ P.S- Karaiparsurai, District- Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 04-02-2016 Heard the learned counsel for the petitioner on merits
as well as on the interlocutory application (I.A. No. 8394 of 2013).

The assail in the present application is to the order
passed by the learned court below rejecting the prayer of the
defendant-petitioner for appointment of a Pleader Commissioner
to find out the fact of partition between the parties.

The title suit was filed by the plaintiff-respondents
for partition of the suit property. The petitioner who was one of
the defendants in the suit appeared and filed his written statement



asserting therein that there had been previous partition of the suit property and therefore the suit was not maintainable and the plaintiff was not entitled to the relief for partition. From the impugned order, it also appears that the defendant-petitioner has based the claim of previous partition on the basis of a memo of partition. During the pendency of the suit, the petitioner filed the petition for appointment of a Pleader Commission to find out the factum of partition in view of the ridges and wall of partition etc. of the suit land. The learned court below has turned down the prayer on the ground that the Pleader Commissioner cannot be appointed for gathering the evidence on behalf of the parties.

The learned counsel for the petitioner has reiterated his prayer and has submitted that the Pleader Commissioner is required to be appointed for finding out the fact of partition as asserted by the defendant no. 1.

The interlocutory application (I.A. No. 8394 of 2013) has been filed praying for stay of further proceeding of the title suit.

After careful consideration of the matter and the submissions on behalf of the petitioner, this Court finds that the learned court below has committed no illegality in rejecting the prayer for appointment of a Pleader Commissioner as made by the

defendant-petitioner purposely for gathering the evidence with regard to the previous partition which is one of the crucial issues in the suit and is to be decided on the basis of evidence led by the parties.

The writ application has no merit and is dismissed accordingly. The interlocutory application also stands dismissed.

(V. Nath, J)

Devendra/-

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