

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.16581 of 2014**

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Narayan Singh son of Late Nathuni Singh resident of village - Shivpur, P.S. Bikramganj, District - Rohtas

.... .... Petitioner

Versus

1. Kedar Nath Singh son of Late Kesav Singh resident of village + Post - Shivpur, P.S. Bikramganj, District - Rohtas  
2. Kanhaiya Singh  
3. Jagarnath Singh Both O.P. no. 2 and 3 are son of Late Shiv Mangal Singh  
4. Arun Singh  
5. Sunil Singh  
6. Anil Singh O.P. No. 4 to 6 are sons of Late Dharma Nath Singh  
7. Kamlesh Singh  
8. Ram Pravesh Singh O.P. No. 7 and 8 are sons of Late Hem Nath Singh O.P. No. 2 to 8 resident of village + Post Shivpur, P.S. Bikramganj, District - Rohtas

.... .... Respondents

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**Appearance:**

For the Petitioner/s : Mr. Sumeet Kumar Singh

For the Respondent/s: Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

ORAL JUDGMENT

**Date: 04-08-2016**

Heard, Mr. Sumeet Kumar Singh, learned counsel for the petitioner.

Questioning the legal acceptability of the impugned order by which the learned Court below has directed for appointment of survey knowing pleader commissioner for taking measurement of the disputed plots, the defendant has filed this application under Article 227 of the Constitution of India.

The suit has been filed by the plaintiff praying for removal of encroachment over his plot no. 1642. In the plaint, the detailed description of the alleged encroachment done by the



defendants has been made and the plot which is said to have been encroached have been mentioned in the schedule denoting it by A, B, C and D. The plaintiff filed the petition before the Court below for appointment of a survey knowing pleader commissioner for the purpose of measurement of the disputed plots. By the impugned order, the learned Court below has allowed the prayer of the plaintiff and directed for appointment of a survey knowing pleader commissioner.

Mr. Singh, learned counsel for the petitioner has submitted that three witnesses on behalf of the plaintiff have already been examined and even it has come in deposition that the plaintiff had earlier got the land measured by private *Amin*. The learned court below has not properly exercised its jurisdiction in view of the fact that the plaintiff has failed to bring on record the report of the private *Amin*. It has been next also submitted that the averments which have been made in the written statement clearly show that there has been no encroachment as alleged by the defendants but the learned court below has not considered the objections raised by the petitioner before passing the impugned order. Learned counsel for the petitioner finally argued that in any view of the matter the impugned order cannot be sustained in the eye of law.

After considering the submissions and materials on record, it is manifest that the suit has been filed for removal of

encroachment alleged to have been done by the defendants over the land of the plaintiff. The fact that three witnesses on behalf of the plaintiff have already been examined and also the fact that during deposition, it has been stated that the plaintiff had already got his land measured through a private Amin, would definitely not preclude the Court from exercising its discretion in getting the disputed plots scientifically measured by a survey knowing pleader commissioner. The provision contained in Order 26 Rule 9 C.P.C. provides wide discretion to the court in such matters where the Court is satisfied that it is requisite and proper to make investigation in order to elucidate any matter in dispute. The principal is also well settled that in cases of encroachment, it is always incumbent upon the court to get the disputed plots scientifically measured by appointing a survey knowing pleader commissioner.

In this background, this Court is not inclined to invoke its jurisdiction under Article 227 of the Constitution of India in order to interdict the impugned order.

The application is, accordingly, dismissed.

However, the learned Court below is directed to expedite the trial of the Suit.

**(V. Nath, J.)**

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