

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19434 of 2015

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Lakshmi Shankar Prasad @ Gopal Ji

.... Petitioner/s

Versus

Triyogi Narayan Prasad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nand Kishore Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 15-11-2016 Heard the learned counsel for the petitioner and the learned
counsel for the respondent.

Perused the impugned order dated 30.10.2015 passed by the
learned Sub Judge Ist, Samastipur in Partition Suit No.84 of 2013 / 353
of 2014 whereby the learned Court below allowed the application filed
by the plaintiff respondent under Order 26 Rule 9 CPC praying for
appointment of pleader commissioner for submission of the report as
mentioned in the application as Annexure '1'.

From perusal of the application under Order 26 Rule 9 CPC filed
by the plaintiff respondent, it appears that the plaintiff prayed for
appointment of pleader commissioner for submission of the report
regarding physical feature of the suit land, whether there is any building
or market complex which are vacant or under tenancy on whom,
whether the tenants are paying rent or rent free.

It may be mentioned here that the plaintiff respondent has filed
the suit praying for partition of the suit property claiming half share

only.

Order 26 Rule 9 CPC reads as follows :-

9. Commission to make local investigation : - In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property or the amount of any *mesne profits* or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.'

In view of the above position of law, here the dispute between the parties is whether the plaintiff is entitled to half share in the suit property or not or whether there is unity of title and possession between the parties or not. For deciding this issue between the parties, it is not at all necessary to see as to whether there is any structure or market complex or its rented or vacant etc. Moreover, it is admitted fact that the application was filed prior to settlement of issues.

From perusal of the impugned order, it appears that the Court below has also not applied judicial mind and passed non-speaking order. Thus, this writ application is allowed and the impugned order is set aside and the application filed by the respondent under Order 26 Rule 9 CPC is hereby rejected.

Sanjeev/-

(Mungeshwar Sahoo, J)

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