

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14158 of 2013

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ASHARFI RAI SON OF KALI RAI RESIDENT OF VILLAGE -
LADAURA, P.S. ALAULI, DISTRICT - KHAGARIA

.... PETITIONER/S

VERSUS

1. SONE LAL MAHTO SON OF LATE GONAR MAHTO @ NUNU MAHTO.
2. RAM CHANDRA YADAV SON OF SONE LAL MAHTO.
BOTH RESIDENT OF VILLAGE - LADAURA, P.O. & P.S. ALAULI, DISTRICT - KHAGARIA
3. UCHIT MAHTON SON OF LATE NUNU MAHTON RESIDENT OF VILLAGE - LADAURA, P.O. + P.S. ALAULI, DISTRICT - KHAGARIA
4. KUSHO ROY.
5. RAM RATAN ROY.
6. RAM BARAN ROY.
ALL (4-6) ARE SONS OF LATE MANNU ROY.
7. RAMDEO ROY.
8. BASUDEO ROY SON OF LATE RAGHUNANDAN ROY.
9. AYODHYA ROY SON OF AMIR CHAND ROY.
ALL ARE RESIDENT OF VILLAGE - LADAURA, P.O. + P.S. ALAULI, DISTRICT - KHAGARIA

.... RESPONDENT/S

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Appearance:

For the Petitioner/s : Mr. Dronacharya, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 06-10-2016

Heard learned counsel for the petitioner.

Petitioner is the defendant second party who is objecting claim of the respondent/plaintiff with regard to certain property. While the petitioner/defendant second party was enjoying the opportunity whereunder witnesses were being produced, during course thereof, petition has been filed on his behalf for appointment of Survey Knowing Pleader Commissioner whereupon order impugned has been passed and being aggrieved thereby, instant petition has been filed.



It happens to be a case of partition and that being so, the share of the parties are to be duly identified and the pattibandi is to be carried out in terms thereof, and for that, the Survey Knowing Pleader Commissioner is to be appointed whose report would be in terms of Order-XXVI Rule-14 of the CPC.

Because of the fact that petitioner/defendant second set had controverted the assertion of the respondent/plaintiff, that event is expected to be duly substantiated at the end of the petitioner/defendant second party. In case, the evidence is found so clumsy which, in the opinion of the court would not enable him to decide the issue properly, logically as well as conclusively then in that event, the court may exercise its jurisdiction under Order-XXVI Rule-10(A) of the CPC. It is not the prerogative of the party rather prerogative of the court.

Learned counsel for the petitioner has submitted that the issue has not properly been dealt with by the learned lower court as, no sound reason has been assigned therefor. After going through the order, I do not see substance at the end of the learned counsel for the petitioner in the background of the fact that the reason over which prayer of the petitioner has been rejected is found properly dealt with by stating that for the purpose of collecting evidence, appointment of Survey Knowing Pleader Commissioner would not be allowed.

That being so, I do not see it a fit case wherein order
impugned warrants interference. Consequent thereupon, instant
petition is rejected.

(Aditya Kumar Trivedi, J.)

