

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.154 of 2017

- =====
1. Nawal Kishore Prasad Mahto son of Gaya Prasad Mahto.
 2. Manju Mahto wife of late Suraj Mahto.
 3. Ganga Sagar Mahto, son of Chander Mahto, all are resident of Village-
Jalalpur, P.S. Patori, Sub-Division- Patori, District Samastipur.

.... Appellant/s

Versus

Deo Narain Prasad Mahto son of late Thakur Mahto, resident of Village:
Jalalpur, P.O.: Jalalpur, P.S.: Patori, Sub-Division Patori, District
Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dilip Kumar Roy

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 30-01-2017

Heard the learned counsel for the petitioners.

Perused the order dated 2.12.2016 passed by the Sub-Judge-I, Pattori, Samastipur in Partition Suit No. 48 of 2015, whereby the court below has rejected the application filed by the defendants petitioners for appointment of Pleader Commissioner under Order 26 Rule 9 C.P.C.

Order 26 Rule 9 C.P.C. reads as follows:

“9. Commissions to make local investigations.- 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.”

It may be mentioned here that the plaintiff-respondent



has filed a suit for partition and for deciding the issues of partition between the parties, local investigation is not all necessary. According to Order-26 Rule 9 C.P.C. if the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, then the court has the jurisdiction to appoint pleader Commissioner. Admittedly, this is a partition suit; therefore, there is no question for appointment of pleader Commissioner for local investigation.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction and accordingly, this Civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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