

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1206 of 2016

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1. Menaka Devi widow of Late Ram Chandra Singh
2. Jagat Prasad Singh
3. Deo Prasad Singh
4. Nawal Kishore Singh
5. Sunil Kumar
6. Raj Kumar
7. Keshav Ranjan All sons of Late Ram Chandra Singh resident of Village -
Rukunpura, P.S. - Danapur, District - Patna. Appellants

Versus

Mostt. Brahmadei Devi daughter of Late Bimla Saran Singh and widow of Late
Gajendra Rai resident of village - Rupaspur, P.S. - Danapur, P.O. - Sahya Nagar,
District - Patna. Respondent

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Appearance :

For the Appellant/s : Mr. Dilip Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 27-02-2017

No body has appeared on behalf of the
petitioners.

Mr.Partha Sarthi, learned counsel for the sole
respondent, has been heard.

The legal sustainability of the impugned order
by which the learned court below has allowed the prayer of the
defendant-respondent for appointment of pleader commissioner to
make local inspection in view of the assertion made by the sole
respondent, has been questioned in the present application under
Article 227 of the Constitution of India.

It is manifest from the records as well as the
impugned order that a petition under Order 39 Rule 2A C.P.C. has



been filed by the petitioners alleging violation of the status quo order passed in the suit against the sole defendant-respondent. From the perusal of the said petition (Annexure-3), it transpires that the allegation has been made with regard to execution of an agreement for sale by the sole defendant-respondent even in spite of the status quo order. The learned court below, however, has observed that in the interest of justice, prayer of the defendant for appointment of pleader commissioner be allowed and accordingly the impugned order has been passed.

This Court, in the facts and circumstances of the case, comes to the conclusion that the direction as contained in the order for appointment of pleader commissioner cannot be sustained in law. In fact, the allegation as contained in the petition under Order 39 Rule 2A C.P.C. subject matter of miscellaneous case initiated on that basis, is only with regard to entering into an agreement for sale by the defendant-respondent in face of the status quo order. The counter allegation by the defendant-respondent in the rejoinder to the said petition that the petitioners are digging and changing the nature of the suit land is clearly beyond the scope of the enquiry under Order 39 Rule 2A C.P.C. This Court comes to the conclusion that the impugned order cannot be legally sustained and deserves to be overturned. It is so done accordingly.

This application is accordingly allowed and



the impugned order is set aside.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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