

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15419 of 2013

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Shailesh Tiwari, Son Of Late Bishwanath Tiwari, Resident Of Sakin & Mauza-
Chandrha, Rupouli, P.S.- Bathwaria, P.O.- Chandrha, District- West Champaran
(Bihar)

.... Petitioner/s

Versus

1. Akhilesh Tiwari Son Of Late Kamta Tiwari Resident Of Sakin & Mauza-
Chandrha, Rupouli, P.S.- Bathwaria, P.O.- Chandrha, District- West Champaran
(Bihar)
2. Hari Shankat Tiwari Son Of Late Ram Nandan Tiwari Resident Of Sakin &
Mauza- Chandrha, Rupouli, P.S.- Bathwaria, P.O.- Chandrha, District- West
Champaran (Bihar)
3. Sharv Daman Tiwari Son Of Late Bishwanath Tiwari Resident Of Sakin &
Mauza- Chandrha, Rupouli, P.S.- Bathwaria, P.O.- Chandrha, District- West
Champaran (Bihar)
4. Satru Mardan Tiwari Son Of Late Bishwanath Tiwari Resident Of Sakin &
Mauza- Chandrha, Rupouli, P.S.- Bathwaria, P.O.- Chandrha, District- West
Champaran (Bihar)
5. Santosh Kumar Tiwari Son Of Hari Shankar Tiwari Resident Of Sakin & Mauza-
Chandrha, Rupouli, P.S.- Bathwaria, P.O.- Chandrha, District- West Champaran
(Bihar)
6. Bali Ram Tiwari Son Of Hari Shankar Tiwari Resident Of Sakin & Mauza-
Chandrha, Rupouli, P.S.- Bathwaria, P.O.- Chandrha, District- West Champaran
(Bihar)
7. Ashok Tiwari Son Of Hari Shankar Tiwari Resident Of Sakin & Mauza-
Chandrha, Rupouli, P.S.- Bathwaria, P.O.- Chandrha, District- West Champaran
(Bihar)
8. Dinesh Tiwari Resident Of Sakin & Mauza- Chandrha, Rupouli, P.S.-
Bathwaria, P.O.- Chandrha, District- West Champaran (Bihar)
9. Lalji Yadav Minor Son Of Dirgh Raj Yadav Under Guardianship Of His Father
And Natural Guardian Dirghraj Yadav Son Shiv Mangal Yadav Resident Of
Mauza- Hardi Nadwa, P.S.- Bagha, P.O.- Bhairoganj, District- West Champaran
(Bihar)
10. Amit Kumar Yadav Minor Son Of Dirgh Raj Yadav Under Guardianship Of His
Father And Natural Guardian Dirghraj Yadav Son Shiv Mangal Yadav Resident Of
Mauza- Hardi Nadwa, P.S.- Bagha, P.O.- Bhairoganj, District- West Champaran
(Bihar)
11. Dirgh Raj Yadav Son Of Shiv Mangal Yadav Resident Of Mauza- Hardi
Nadwa, P.S.- Bagha, P.O.- Bhairoganj, District- West Champaran (Bihar)
12. Baidya Nath Pandit Son Of Late Bhola Pandit Resident Of Mauza- Hardi
Nadwa, P.S.- Bagha, P.O.- Bhairoganj, District- West Champaran (Bihar)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhrub Narayan, Sr.Adv.

Mr. Prabhat Kumar Dipak, Adv.



For the Respondent no.1: Mr. Shashi Shekhar Dwivedi, Sr. Adv.

Mr. Ranjan Kumar Dubey, Adv.

Mr. Parth Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-01-2017

Heard Mr. Dhrub Narayan, the learned senior counsel appearing on behalf of the petitioner.

The legal sustainability of the impugned order, by which the learned court below has directed for appointment of a Pleader Commissioner to enquire and report about the facts existing over the disputed land, has been questioned by the defendant-petitioner by filing this application before this Court under Article 227 of the Constitution of India.

The learned senior counsel appearing on behalf of the petitioner has submitted that the learned court below has not assigned any reason before passing the impugned order directing for appointment of a Pleader Commissioner. It has further been contended that the purpose of appointment of a Pleader Commissioner, as prayed by the plaintiff, is only to collect evidence and for the said purpose the Pleader Commissioner could not have been appointed. Elaborating the submissions, the learned senior counsel appearing on behalf of the petitioner has pointed out that



the plaintiff has claimed his right and title over the suit land and on the same basis there has been previous litigation between the parties, which is pending at the stage of appeal and in this background the learned court below ought not to have directed for appointment of a Pleader Commissioner as prayed.

After considering the submissions and perusal of the materials on the record as well as the impugned order, it is manifest that the suit has been filed for declaration of right, title and possession over the suit property. During the pendency of the suit, a prayer was made on behalf of the plaintiff for appointment of a Pleader Commissioner to make enquiry and report about the facts relating to the disputed land. The learned court below in the impugned order has taken into notice the main objection on behalf of the defendant-petitioner relating to identification of the disputed land in absence of the boundary as well as khata and kheshra number. The learned court below after taking into consideration the objection on behalf of the defendant-petitioner that the Pleader Commissioner would not be able to identify the suit land has in its discretion passed the order appointing pleader commissioner. This Court has not been persuaded to conclude that the impugned order would prejudice the merits of the case of the petitioner.

This Court therefore is not inclined to invoke the



jurisdiction under Article 227 of the Constitution of India for interfering in the impugned order. This application is, accordingly, dismissed.

However, this order will not prejudice the right of the defendant-petitioner to raise appropriate objection in accordance with law.

(V. Nath, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.02.2017
Transmission Date	

