

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.154 of 2016

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1. Gaytri Devi Wife of Nawal Kishore Pd Singh
 2. Nawal Kishore Pd. Singh Son of Late Thakur Alakh Narain Singh Both are resident of Mohalla- Subhash Nagar, Road No.3, P.O.- New Jaganpura, P.S. Ram Krishna Nagar, District- Patna.
 3. Smt. Shakuntala Devi Wife of Late Ram Payare Singh
 4. Ajay Kuar Son of Late Ram Payare Singh Both are resident of Mohalla- Kailashpuri, Hanuman Nagar, P.S.- Patrakar Nagar, P.O.- Hanuman Nagar, District- Patna

.... Petitioner/s

Versus

1. Pusupati Nath Sinha Son of Jagarnath Prasad Resident of Mohalla- Nai Godown, Pahasi Lane, Gaya. at present Mohalla- Subhash Nagar, Lane No.2, P.O. Jaganpura, P.S.- Ram Krishna Nagar, District- Patna-27. At present residing at Kishori Niwas, IM/36 P.O.- Mahatama Gandhi Nagar, P.S.- Agamkuan, District- Patna-26.
2. Smt. Mahapati Devi Wife of Ram Ashray Prasad Resident of Mohalla- Subash Nagar, Lane No.2, P.O.- New Jaganpura, P.S. Ram Krishna Nagar, District- Patna-27.

-Defendants-Respondent 1st party

3. Shashi Bhushan Kumar
4. Manoj Kumar Both sons of Late Ram Payare Singh Both resident of Mohalla- Kailashpuri, Hanuman Nagar, P.S.- Patrakar Nagar, P.O.- Hanuman Nagar, District- Patna

.... Plaintiffs-Respondent 2nd party

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Appearance :

For the Appellant/s : Mr. Kamteshwar Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

4 04-12-2017 Heard both sides.

The petitioners have filed this civil miscellaneous petition against the order dated 02.04.2016 passed in Title Suit No.426 of 2009 by the Sub Judge II, Patna whereby and whereunder the learned Sub Judge rejected the petition of the petitioners for appointment of Pleader Commissioner in order to



ascertain the encroachment of pathway passage.

The learned counsel for the petitioners submits that the plaintiff filed the suit for removal of encroachment from the road carved out in Plot No.1129. The oral or documentary evidence cannot ascertain the extent of encroachment on the road situated in plot no.1129 and that is why the petitioners filed petition for appointment of Pleader Commissioner but the learned Sub Judge has committed jurisdictional error in rejecting the petition on the ground that the Court cannot appoint Pleader Commissioner for collecting evidence.

The learned counsel for the respondents while supporting the order of the Sub Judge submitted that order 26 Rule 10 empowers the Court to appoint Pleader Commissioner if the Courts thinks it proper to collect scientific evidence. It is prerogative and discretion of the Court to appoint Pleader Commissioner. There are many purchasers of plot no.1129 and all the purchasers are necessary party. The petitioners have already adduced the oral and documentary evidence. The petitioners also filed a petition on 16.04.2012 for appointment of Pleader Commissioner but the same remained pending as the petitioners did not press the same. The petitioners again filed another petition on 07.08.2015 for appointment of Pleader Commissioner and the



same was rightly rejected on 02.04.2016.

Admittedly, the plaintiff filed the suit for declaration that road is passing through plot no.1129 but only 2 feet road is existing. It is stated that 6 feet passage from the western portion of the passage was encroached by owner of the western part of the land. It is evident that without measurement of the land, plot no.1129, the width and length cannot be ascertained. The sale deed says about the existence of passage throughout the plot no.1129. Therefore, the prayer for appointment of Pleader Commissioner in order to ascertain the length and extent of encroachment is just and proper and the learned Sub Judge has committed jurisdictional error in rejecting the petition for appointment of Pleader Commissioner.

Accordingly, the civil miscellaneous petition is allowed. The order dated 02.04.2016 is set aside and the petition of petitioner is allowed.

(Prabhat Kumar Jha, J)

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