

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17438 of 2011

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Narendra Choudhary S/o Ram Charitra Chaudhary Resident of Village & P.O.-
Dumharpatti, Circle+ Subdivision +P.S.-Pupari, District- Sitamarhi.

.... Petitioner

Versus

Amrendra Choudhary S/o Ramcharitra Choudhary Resident of Village +P.O.-
Dumharpatti Circle+Subdivision +P.S.-Pupari, District- Sitamarhi.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Amrit Abhijat
Mr. Manoj Kumar Gupta
For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 02-11-2017

This petitioner was defendant before the court below and he has filed this application for issuance of an appropriate writ order or direction for setting aside the order dated 06.08.2011 passed by the learned Sub-Judge, 1, Sitamarhi in Final Decree No. 5 of 2009. The learned court below without deciding the objection petition of this petitioner ordered for preparation of final decree.

2. Heard the learned counsel for the petitioner. However, no body appeared on behalf of the respondent.

3. The respondent is full brother of the petitioner and he had filed a Partition Suit No. 103 of 2005 for partition of family property claiming 1 /3rd share in the land mentioned in schedule-1 of the plaint. The suit was decreed and a preliminary decree was passed on



01.02.2007. On the petition of this petitioner an Advocate Commissioner was appointed to carve out a separate Patti for the petitioner in the suit property. As per preliminary decree, the learned Advocate Commissioner prepared Takhtabandi and submitted a report. This petitioner filed an objection on 16.06.2011 against the report of the Advocate Commissioner on the ground that the Advocate Commissioner has not prepared Takhtabandi properly. The court below without deciding the objection of the petitioner has ordered for preparation of final decree.

4. From perusal of order-sheet, it appears that the court below called for a report from Siristedar on the report of Commissioner. The Sheristedar submitted report and the matter was fixed for hearing. The court below as per order dated 06.08.2011 accepted the report of Siristedar and directed the office to prepare final decree on filing of required non judicial stamp. The grievance of this petitioner is that the court below has erred in directing the office to prepare the final decree on the basis of report of Siristedar submitted on the report of Advocate Commissioner. The court below kept the objection petition of this petitioner pending. The court below has thus committed error in accepting the report of Advocate Commissioner. The impugned order is thus not sustainable in the eyes of law and is accordingly set aside.



5. The matter is remitted to the court below with a direction to decide the objection filed on behalf of the petitioner and thereafter, proceed further in accordance with law. This civil writ application is accordingly allowed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.11.2017
Transmission Date	NA

