

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17899 of 2013

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1. Sheo Pujan Pandey Son of Late Triveni Pandey,
 2. Ram Chandra Pandey Son of Late Triveni Pandey
 3. Ram Pujan Pandey Son of Late Triveni Pandey
 4. Baban Singh Son of Late Sakal Deep Singh
 5. Lal Mohan Singh Son of Late Sakal Deep Singh
 6. Bashisth Singh Son of Late Sakal Deep Singh
 7. Ram Awadh Singh Son of Late Sakal Deep Singh

All are residents of village-Pandey Pipra, Police Station- Mohaniya, P.O.- Mujan,
District-Kaimur (Bhabua).

.... Petitioner/s

Versus

1. Bansh Narayan Pandey Son of Late Mahadeo Pandey, resident of village-
Pandey Pipra, Police Station- Mohaniya, P.O.- Mujan, District-Kaimur (Bhabua).
2. Shyam Narayan Pandey Son of Late Mahadeo Pandey resident of village-
Pandey Pipra, Police Station- Mohaniya, P.O.- Mujan, District-Kaimur (Bhabua).
3. Ram Narayan Pandey Son of Late Mahadeo Pandey resident of village-
Pandey Pipra, Police Station- Mohaniya, P.O.- Mujan, District-Kaimur (Bhabua).
4. The Collector, Kaimur, resident at+P.O.+P.S. Bhabua, District- Kaimur
(Bhabua).
5. Block Development Officer, Mohania, P.O.+P.S.+Anchal- Mohania, District-
Kaimur (Bhabua).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Radha Mohan Pandey, Adv.
For the Respondent/s : M/s Parth Gaurav, Shambhavi Shankar and
Anshu Raj Singh, Advs.
For the State : Mr. Kameshwar Kumar, GP-17
Mr. Arbind Kumar, AC to GP-17

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 01-12-2017

This application has been filed for setting aside the order
dated 28th June 2013 passed by the learned Additional Munsif-IV,
Bhabua in Title Suit No. 4 of 1999/117 of 2010.

2. Heard learned counsel for the petitioners as well as
the respondents.



3. The fact, in brief, is that the respondents 1st set filed a declaratory suit against the defendants. The defendants appeared and filed written statement. During trial, an Advocate Commissioner was appointed and after inspection and measurement, the Advocate Commissioner submitted a report. The defendant 1st set filed an objection and prayed to set aside the report of Advocate Commissioner on the ground that the inspection was made in absence of defendant. It has been submitted that the total area of plot no. 149 as per khatiyani is 6 decimal, but the Advocate Commissioner after measurement has submitted report showing the area of said plot as 9 decimal. The said report has been submitted in collusion with the plaintiff. The Advocate Commissioner neither visited at spot nor measured the land and has submitted report against the actual state of affairs.

4. On perusal of impugned order I find that the Court below finding no illegality has refused to reject the report of Commissioner observing that the objection shall be considered at the time of deciding the suit. The report of Commissioner has not been taken into consideration as evidence. The said document can only be taken in evidence if the plaintiff examines the Advocate Commissioner on oath and in the event of evidence of Advocate Commissioner, the petitioner will have opportunity to demolish his



report by cross-examining him. The report of Commissioner cannot help the plaintiff in any way unless it is established to be scientific and reasoned report.

5. In the above facts and circumstances, I do not find any merit in this application requiring any interference in the impugned order.

6. Accordingly, this application is dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.12.2017
Transmission Date	

