

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16493 of 2013

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Lalita Sinha Wife Of Late Parmeshwar Prasad Sinha Resident Of Moh- Kashipur,
Adarsh Nager, P.S. & Dist:- Samastipur

.... Petitioner

Versus

1. Sunil Kumar Singh Son Of Sri Lakshmi Singh Resident Of Mohanpur Road,
Near Dav School, P.S. & Dist: Samastipur
2. Vidhundevar Prasad Singh Son Of Sri Lakshmi Singh Resident Of Mohanpur
Road, Near Dav School, P.S. & Dist: Samastipur
3. Renu Singh Wife Of Sri Vishundevar Prasad Singh Resident Of Mohanpur Road,
Near Dav School, P.S. & Dist: Samastipur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. MANAS PRAKASH

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 07-02-2017

Heard the learned counsel for the parties.

The legal sustainability of the impugned order by which the learned court below has rejected the prayer of the plaintiff for taking into evidence the report of the pleader commissioner and allied materials, has been questioned in this application under Article 227 of the Constitution of India.

After considering the submissions and perusal of the materials on record including the impugned order, it is manifest that a survey knowing pleader commissioner was appointed by the court to submit his report on the points as directed. The said pleader commissioner has submitted his report alongwith the evidence



therewith. However, the said pleader commissioner died thereafter. The prayer of the plaintiff as is evident from his petition brought on record as Annexure-2 is to take in evidence the self-written ordersheet and service of notice by the said pleader commissioner on record. The learned court below by the impugned order has rejected the said prayer on the ground that the plaintiff has the option to get another survey knowing commissioner appointed after the death of the previous survey knowing pleader commissioner.

In view of the provision as contained in Order 26 Rule 10 (B) C.P.C there remains no dispute that the report submitted by the pleader commissioner alongwith the evidence shall by virtue of the said provision would be the part of the record as well as evidence in the suit. The prayer made by the plaintiff was in consonance of the said provision. The learned court below therefore has committed error of jurisdiction and material irregularity in refusing the prayer made by the plaintiff in paragraph-3 of the petition (Annexure-3).

The present application is accordingly allowed and impugned order is set aside. The matter is remitted back for passing a fresh order on the petition filed by the plaintiff, in accordance with law.

It goes without saying that the defendants



would be at liberty to raise his objections to the report already submitted as well as to the prayer of the plaintiff and the same shall be considered by the court before passing a fresh order, in accordance with law.

The application is accordingly allowed with observation.

(V. Nath, J)

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