

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17102 of 2013

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Narayan Dubey, son of Late Narad Dubey, resident of village-Bangara, P.S. Manjhi, District-Saran.

.... Petitioner/s

Versus

Jitendra Dubey, son of Late Naagesh Dubey, resident of village-Bangara, P.S. Manjhi, District-Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Advocate.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 28-02-2017

Heard learned counsel for the petitioner and perused the records of the case.

2. This writ petition may be disposed of at the admission stage itself.

3. This writ petition has been preferred against the order dated 10.07.2013 passed by the Additional Munsif –III Saran at Chapra in Eviction Suit No. 02 of 2009, whereby and whereunder he rejected the petition filed on behalf of the petitioner for appointment of Survey Knowing Pleader Commissioner on the ground that prior to filing of the present petition, the petitioner had filed a petition of similar nature, which was rejected on merit and no fresh material was brought before the court below for appointment of Survey Knowing Pleader Commissioner.



4. Although learned counsel appearing for the petitioner tried his best to show that the principles of *res judicata* do not apply in miscellaneous petition but, in my view, the aforesaid issue is not involved in the present matter because the learned court below has specifically mentioned in his order that no fresh material was brought before it for appointment of Survey Knowing Pleader Commissioner and, therefore, it is apparent from the aforesaid finding of learned the court below that the learned court below has not rejected the petition taking help of principles of *res judicata*.

5. On the basis of aforesaid discussions, in my view, there is no need to interfere with the impugned order and, accordingly this writ petition stands dismissed at the admission stage itself.

6. However, it is made clear that if any new ground is brought by the petitioner before the court below for appointment of Survey Knowing Pleader Commissioner, the concerned court may consider the aforesaid petition of the petitioner and this order shall not cause any prejudice to the petitioner at the time of passing of the order on the aforesaid petition.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
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