

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16208 of 2013

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1. Md. Usman , Son of Late Chamru Mian.
 2. Md. Razzaque Son of Late Ali Hassan.
 3. Md. Siddique Son of Late Saboor.
- All residents of village-Ushamanpur Nager Toli, P.S.-Kharik District Bhagalpur.

... Petitioners

Versus

1. Abdul Gani Son of Late Shekhawat.
 2. Bibi Latifan Daugther of Late Shekhawat.
 3. Md. Habib Son of Late Suleman.
 4. Md. Zainif Son of Late Suleman.
 5. Bibi Shaira Khatoon Daugher of Late Suleman.
 6. Bibi Najmoon Daughter of Late Suleman.
 7. Bibi Nurjahan Daughter of Late Suleman.
 8. Md. Mannan Son of Late Liyakat.
 9. Md.Rajo.
 10. Md. Kajo.
 11. Md. Delar.
- All Sons of Md.Mannan.
12. Bibi Nazo Khatoon Daugher of Md. Mannan.
- All Residents of Village-Usmanpur P.S. Kharik District Bhagalpur.
13. Md. Taufique.
 14. Md. Rahmat.
- All sons of Late Musrid.
15. Md. Shomit Son of Late Musrid.
- All Residents of Village Usmanpur P.S. Kharik District-Bhagalpur.
16. Md. Taslim.
 17. Md. Jasim.
 18. Md.Shamim.
 19. Md. Irfan.
- Respondent No.16 to 19 Son of Late Manir, All Residents of Village Usmanpur P.S. Kharik District-Bhagalpur.
20. Md. Amim Son of Late Manir, Resident of Village- Athgama P.S. Kharik P.O. Raghapur, District Bhagalpur.
 21. Bibi Maimun Khatoon Wife of Aslam Resident of Village Lokmanpur, P.s. Kharik District Bhagalpur.
 22. Md. Rahim.
 23. Md. Fahim.
- All Sons of Late Akbar.
24. Md. Adalat.
 25. Md. Gaffar.
 - (i)Md. Gabbar.
 - (ii) Nabab.
 - (iii)Md. Kailu.
 - (iv) Md. Nepali.
 - (v) md. Gulam.
 - (vi)Md. Nausad.
 - (vii)Bibi Pazia.



(viii)Bibi Razwani.

Respondent No.25 to 25 (viii) All sons and Daughters of Late Aninul.

26. Md. Ziya Uddin.

27. Md. Nizam.

Both Sons of Late Akbar.

28. Bibi Mariyam Wife of Md. Khalil.

All Residents of Village-Usmanpur, Nagar Toli P.S. Kharik District Bhagalpur.

29. Md. Shamsul Son of Late Babulal, Resident of Village-Krrhu P.S. Bihpur District Bhagalpur.

30. Bibi Taulia Khatoon Wife of Md. Shakir Nadaf Resident of Village Baisha P.S. Parbatta District-Khagaria.

31. Bibi Riyazan Khatoon Daughte of Ali Hassan Wife of Hamid, Resident of Village-Parbatta, P.S.-Parbatta District Khagaria.

32. Bibi Sahjadi Khatoon Daughter of Ali Hassan and wife of Ganouri Resident of Village Sahora, Madrauni P.S. Gopalpur District Bhagalpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. SUNIL KUMAR SINGH

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-02-2017

Heard the learned counsel for the petitioners.

The defendants are the petitioners in this application under Article 227 of the Constitution of India which has been filed, questioning the legal sustainability of the impugned order by which the learned court below has turned down the prayer on behalf of the defendants for appointment of pleader commissioner to ascertain the possession of the defendants over their house.

There is no doubt that the suit has been filed for partition by the plaintiff where the defendants have contested the relief as prayed by the plaintiff on the ground that there had been previous partition and the defendants have been in possession over the



suit property exclusively allotted in that partition. It further transpires from the impugned order that the suit has been posted for final argument and at that stage the defendants-petitioners have prayed for appointment of pleader commissioner. The observations made by the court in the impugned order, also reflect upon the conduct of the petitioners in the suit. The learned court below has rightly observed in the impugned order that a pleader commissioner cannot be appointed by the court on the prayer made by any of the parties for the purpose of gathering evidence.

In this background, this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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