

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1057 of 2016**

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1. Rajeshwari Prasad Singh Son of Late Basudeo Singh resident of Village-
Bakhaur, Police Station- Barhara in the district of Bhojpur.

.... Petitioner/s

Versus

1. Ram Nath Singh Son of Late Basudeo Singh resident of Village-
Bakhaur, Police Station- Barhara in the district of Bhojpur.

.....Defendant 1st set/Respondent

2. Shyam Bihari Singh Son of Late Basudeo Singh
3. Sudarshan Singh Son of Late Basudeo Singh
4. Sushila Devi wife of Late Raghuwar Dayal Singh
5. Mithilesh Singh Son of Late Raghuwar Dayal Singh
6. Mukesh Singh Son of Late Raghuwar Dayal Singh
7. Rupesh Singh Son of Late Raghuwar Dayal Singh
8. Mamta Kumari Daughter of Late Raghuwar Dayal Singh All are resident
of Village- Bakhaur, Police Station- Barhara in the district of Bhojpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar
For the Respondent/s : Mr. Bishwanath Choudhary
Mr. Ram Hriday Prasad
Ms. Maruti Kumari

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER**

4 19-01-2018 Heard the parties.

The petitioner is the plaintiff in Partition Title Suit
No.327 of 2003. The judgment was delivered on 28.02.2009 and
preliminary decree was prepared on 18.03.2009. The plaintiff was
granted half share in the land mentioned in Schedule (ka) of the
plaint and plaintiff was also entitled to get 2/6th share in the land
mentioned in schedule (ka) of the plaint. The defendants of course
filed First Appeal No.34 of 2010 against the preliminary decree



which was dismissed on 19.04.2011. The defendants thereafter filed Second Appeal No.289 of 2011 but that was also dismissed on 14.03.2013. The plaintiff filed petition for appointment of Pleader Commissioner. The defendants filed objection petition on the Pleader Commissioner report on 30.08.2010 and the learned Sub Judge II vide order dated 26.07.2016 rejected the report of the Pleader Commissioner on the ground that the report is not in accordance with law as on comparison of the maps and the report, there is difference. Petitioner-plaintiff being aggrieved by aforesaid order, filed this civil miscellaneous petition.

Mr. Sunil Kumar, learned counsel for the petitioner submits that the Pleader Commissioner gave several notices to the defendant but defendant did not appear before the Pleader Commissioner. The report of the Pleader Commissioner does not suffer from any infirmity or illegality.

The learned counsel for the respondents, on the other hand, submitted that from the order itself it would appear that the Pleader Commissioner report is in contravention of the maps, if compared, and the Pleader Commissioner also gave entire lands duly mentioned in schedule (kha) of the plaint to the plaintiff although the plaintiff did not get any share nor sought for any relief with regard to share in schedule (kha) of the property. On



perusal of the order of the learned Sub Judge II, I find that the learned Sub Judge has found that the reports of the Pleader Commissioner is not in consonance with the report taken after comparison of the maps and the measurement done by the Pleader Commissioner is erroneous besides the facts that in the preliminary decree the plaintiff did not get any share in the lands mentioned in schedule (kha) of the plaint but the Pleader Commissioner also allotted the entire share of the lands mentioned in schedule (kha) of the plaint to the plaintiff.

Having considered the facts aforesaid, I find no illegality or jurisdictional error in the order passed by the learned Sub Judge. Accordingly, the civil miscellaneous petition is dismissed.

The learned Subordinate Judge is directed to forthwith appoint Pleader Commissioner for the needful on the petition of the plaintiff.

(Prabhat Kumar Jha, J)

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