

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.561 of 2016

- =====
1. Mahesh Thathera Son of Late Ram Barat Thathera
 2. Kari Devi wife of Mahesh Thathera Both resident of Village and P.o. Tharthari P.S. Tharthari, District Nalanda. at present Noorsarai P.O. and P.S. Noorsarai, District- Nalanda.

.... Petitioners

Versus

1. Onkar Mahuri
2. Uday Mahuri Both sons of Ayodhya Ram resident of Mohalla- Daya Nagar Noorsarai, P.O. and P.S. Noorsarai, District- Nalanda.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Pankaj Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 16-03-2018

Heard both sides.

The petitioners have filed this Civil Miscellaneous petition against the order dated 29.04.2016 passed in Eviction Suit No.7/2012 by learned Additional Munsif-II, Biharsharif, Nalanda, by which, the learned Additional Munsif-II, Biharsharif, Nalanda allowed the petition of the defendants for appointment of Pleader Commissioner for measurement of the land. The petitioners are the plaintiffs.

Learned counsel for the petitioners filed suit for eviction of the defendants from the suit premises. The defendants filed written statement denying the relationship of landlord and tenant and claimed title over 8 decimal of land by virtue of sale deed executed by owner



of the land in the year 1948. The Plaintiffs purchased 3 decimal of land in the year 1989.

Learned counsel for the defendants submitted that the appointment of pleader commissioner is justified and the land is required to be measured.

I find no force in the contention of learned counsel for the defendants. Admittedly, the suit is for eviction of the defendants and in the suit of eviction only point to be decided as to whether there is any relationship of landlord and tenant between the parties. The appointment of pleader commissioner, is therefore, unnecessary and illegal that too at the fague end of the trial of the suit.

Accordingly, I find that learned Additional Munsif-II, Biharsharif, Nalanda has committed jurisdictional error by appointing pleader commissioner in suit for eviction and accordingly, the order dated 29.04.2016 passed in T.S. No.7/2012 is set aside and the civil Miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24-03-2018
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