

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.228 of 2018**

Uma Devi, wife of Baidyanath Hajara, Resident of Mohalla- I.T.I. Jayprakash Nagar, P.O. Bettiah, Police Station- Bettiah Mufassil, District- West Champaran.

... .. Appellant/s

Versus

1. Sushil Kumar Gupta, son of Sri Shambhu Prasad Gupta, Resident of Mohalla- Ujjain Tola, Mohawat Toli, Bettiah Ward no. 36, P.O. and Police Station- Bettiah Town, District- West Champaran.
2. Most. Jagrani Devi, wife of Late Sukul Manjhi
3. Bikash Kumar
4. Disha Kumari
5. Khusbhu Kumari
6. Babi Kumari
7. Choti Kumari All 3 to 7 minor sons and daughter of Late Sukul Manjhi under guardianship of mother Most. Jagrani Devi.
8. Paras Manjhi, son of Raghunath Manjhi, All 2 to 8 Resident of Village- Barwat Parsaini, Kharshal No. 2, Mushar Toli, P.O. Bettiah, Police Station- Bettiah Mufassil, District- West Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ram Kishun Prasad
For the Respondent/s : Mr.

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

Date : 25-08-2018

Heard the learned counsel for the petitioner.

2. The petitioner filed this civil miscellaneous petition against the order dated 21.04.2017, passed by learned Sub Judge, III, West Champaran, Bettiah in Title Suit No.225 of 2014 by which the learned Sub Judge dismissed the petition of the petitioner for appointment of Pleader Commissioner to report about the constructions on the disputed land.



3. The petitioner is the defendant. The plaintiff filed a suit for declaration that the sale deed executed by Paras Manjhi and Sukul Manjhi in favour of Uma Devi is inoperative, void and without consideration as Paras Manjhi and Sukul Manjhi did not have any title over the disputed land and, therefore, the sale deed is illegal. The plaintiff also sought relief for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff. During the pendency of the suit, the petitioner, defendant no.1, filed the petition under Order XXVI Rule 10A of the C.P.C. for appointment of Pleader Commissioner and by the impugned order, the learned Sub Judge has rejected the petition that the suit is at the stage of Section 89 of the C.P.C. and the issue has not yet been framed. Order XXVI Rule 10A empowers the court to appoint a Pleader Commissioner where any question arising in the suit involves any scientific investigation, which cannot, in the opinion of the Court, be conveniently conducted before the Court. The court may, if it thinks necessary, appoint such persons for report after such measurement but it appears that the petitioner filed a petition for collection of evidence although the suit is at the stage of Section 89 of the C.P.C., therefore, I do not find any illegality in the order dated



21.04.2017. Accordingly, the civil miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.08.2018
Transmission Date	NA

