

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7876 of 2014

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1. Shivjee Sah
2. Janardan Prasad
Both are sons of Suraj Sah resident of Village/Mohalla - Sadha, P.O.
Chapra, P.S. Chapra Mufasil, District – Saran.

.... Petitioners

Versus

1. Smt. Asha Rani wife of Ramchandra Prasad Shrivastava resident of
Mohalla - Dahiyawa, P.O. Chapra, P.S. Chapra Mufasil, District – Saran.
2. Lalan Patel Son of Late Mahadeo Ram resident of Mohalla - Darshan
Nagar Purbi Slempur, P.O. Chapra, P.S. Chapra Mufasil, District – Saran.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Madhaw Prasad Yadaw, Advocate
For the Respondent/s : Mr. Vijay Kr. Srivastava, Advocate
Mr. Ashok Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

3 31-01-2018 The defendants of Title Suit No.21 of 2009 pending

before the Court of Munsif II, Saran at Chapra have filed this writ

application for quashing the order dated 01.02.2014 whereunder

an Advocate Commissioner has been allowed to measure the land

in dispute.

2. Heard learned counsel for the petitioners as well as
the respondents.

3. The respondent no.1 (plaintiff) filed the aforesaid title
suit for a decree of permanent injunction restraining the petitioners
from interfering in her possession over the land mentioned in
Schedule I of the plaint and recovery of possession over the land



mentioned in Schedule II of the plaint. The respondent (plaintiff) claims to have purchased the land by virtue of registered sale deed. The petitioners have also their lands adjacent to the suit land towards western side. After filing of the suit, the petitioners allegedly encroached the land of the plaintiff and constructed boundary wall over the same. The respondent (plaintiff) filed an application on 23.09.2013 for appointment of survey knowing Pleader Commissioner to measure the land which was purchased by her and also to ascertain the area encroached by the defendant. The petitioners filed rejoinder and after hearing both sides the court below appointed survey knowing Pleader Commissioner as per impugned order dated 01.02.2014.

4. In the rejoinder to the petition, the petitioners have denied the allegation of encroachment and asserted that they were in possession over the suit land since before the purchase of plaintiff. The contention of learned counsel for the petitioners is that the Pleader Commissioner cannot be appointed to collect evidence for any party and, that too, at the initial stage of the suit.

5. The learned counsel for the respondents, on the other hand, submitted that in the rejoinder itself, the petitioners have stated that encroachment can be ascertained only by appointment of Pleader Commissioner.



6. In view of the case of both the parties, the moot question relates to ascertainment the encroachment, which is possible only after measurement of the suit land. It is not a case of collecting evidence for any party. The identification of land is possible only by appointment of Pleader Commissioner as has been admitted by the petitioners in their rejoinder filed before the court below.

7. In view of above facts I find that the court below has not committed any jurisdictional error in appointing the Pleader Commissioner to measure the suit land for ascertaining the encroachment. This writ application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

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