

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19054 of 2013

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Lalita Devi W/o Late Hansh Nath Kanu, R/o village Andar, Pargana Andar, PS-Andar and District Siwan.

.... Petitioner/s

Versus

1. Manohar Prasad S/o Yogendra Prasad, R/o village Andar, P.S. Andar, District Siwan
2. Pawan Kumar Minor S/o Yogendra Prasad through Father Natural Guardian, R/o village Andar, P.S. Andar, District Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Chandra Kant and Navin Kumar, Advts.

For the Respondent/s None

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 14-03-2018

The plaintiff of Title Suit No. 454 of 2011 pending in the court of Sub-Judge-VII, Siwan has filed this application for quashing the order dated 11th July 2013 whereby and whereunder the learned court below refused to appoint Pleader Commissioner for holding local inspection and submitting report on the points mentioned in the petition.

2. Heard learned counsel for the petitioner. Nobody appeared for the respondents although notice issued against the respondent has been declared validly served.

3. The petitioner-plaintiff has filed the aforesaid suit for declaration that the deed of gift dated 19.02.2011 purported to be executed by her in favour of the defendants with respect to the suit



land is void, effective and not binding on her. The plaintiff further sought relief for temporary injunction restraining the defendants from causing any interference in possession of plaintiff and changing physical feature of the suit property. The plaintiff in her plaint at para 1 has specifically stated that the suit land measuring 5 dhur 10 dhurki is residential land over which a double storied building is existing. The defendants appeared and filed written statement denying the said fact. The defendants at para 9 of their written statement denied the said statement of the plaintiff. They have stated that the plaintiff has to prove these facts as to whether a double storied building is existing or not. The plaintiff in view of denial of defendants as regards existence of double storied building, has filed a petition for appointment of Advocate Commissioner to report as to whether the suit land contains double storied building. The another point, which the plaintiff wants to be reported, is that as to who are occupying the suit premises and whether any activity is going on or not in the suit premises. The court below after hearing both sides, rejected the petition observing that by appointment of Pleader Commissioner, the petitioner wants to collect evidence, which is not permissible in law.

4. The learned counsel for the petitioner submitted that in order to establish the existence of building over the said land, an enquiry by a Pleader Commissioner is essential in view of assertion of



the defendant that there is no building over the land.

5. In view of above fact, the impugned order refusing to appoint Advocate Commissioner is set aside and this application is allowed. The court below is directed to appoint an Advocate Commissioner to get a report as to whether there is any building over the land in question or not as asserted by the plaintiff.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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