

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20759 of 2013

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Param Hans @ Prabhans Baitha S/o Late Chhathu Baitha, Village - Ranighat
Pargana - Bal, P.S. Siswan, District – Siwan.

.... Petitioner/s

Versus

1. Awadhesh Baitha Son of Late Chhathu Baitha, Village - Ranighat, Pargana - Bal, P.S. Siswan, District – Siwan.
2. Sukhal Baitha Son of Late Chhathu Baitha, Village - Ranighat, Pargana - Bal, P.S. Siswan, District - Siwan
3. Anju Devi W/o Awadhesh Baitha, Village - Ranighat, Pargana - Bal, P.S. Siswan, District - Siwan
4. Dhup Baitha Son of Late Chhatthu Baitha, Village - Ram Garh, Pargana - Bal, P.S. Siswan, District - Siwan
5. Mt. Fulpati Kumari W/o Late Chhatthu Baitha. Village - Ram Garh, Pargana - Bal, P.S. Siswan, District – Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kaushal Kishore Mishra
For the Respondent/s : Mr. Chandra Kant, Navin Kumar and
Manish Chandra Gandhi, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 11-04-2018

The defendant of T.S. No. 636 of 2008 pending in the court of 1st Sub-Judge, Siwan, has filed this application for setting aside the order dated 27th August 2013 whereby and whereunder his petition for appointment of Survey Knowing Pleader Commissioner was rejected.

2. Heard learned counsels for the petitioner and the respondents.

3. The respondent nos. 1 to 3 filed the aforesaid title suit T.S. No. 636 of 2008 on the file of Sub-Judge for declaration of title



over the land mentioned in Schedule-I of the plaint and further that the defendant-petitioner has no right to cause any interference in his peaceful possession. The defendant-petitioner is full brother of plaintiff nos. 1 and 2. He appeared and filed written statement. After closing the evidence of plaintiffs (respondents) the defendant-petitioner produced his witnesses. During the evidence stage this petitioner filed a petition for appointment of an Advocate Commissioner to measure the plot no. 2649 and to submit a report as to whether an area measuring 2 katha 7 dhurs from northern side contains residential house, Nad, Khunta, Plani etc. or not. The plaintiffs-respondents filed rejoinder and after hearing both sides, the court below dismissed the petition.

4. It has been submitted that the defendant-petitioner has got his residential house over the suit land which is in his exclusive possession. The land was partitioned in four shares and the defendant-petitioner got share and possession over 2 katha 7 dhurs land from northern side. The plaintiffs-respondents on the other hand have asserted that they had acquired the suit land by virtue of registered sale deeds which were executed by their father. After purchasing the land, they got possession over the said land. The plaintiffs-respondents have sought relief for declaration of title on the basis of their respective sale deeds. It is not a suit for removal of



encroachment or recovery of possession and so there is no need to measure the land and report about the physical feature of the suit property. The plaintiffs-respondents will succeed only on proving their title over the land. The defendant-petitioner is full brothers of plaintiff nos. 1 and 2 and so the possession of any party is not material in deciding the suit. The court below considering all these facts, has rightly rejected the petition.

5. On going through the submissions/pleadings of both the parties I find that the suit has been filed for declaration of title and possession over the suit property on the basis of registered sale deeds. Both the parties are claiming to be possession over the same. The father of plaintiffs had acquired the suit land and executed the sale deeds in favour of plaintiffs-respondents and so the title of the party is to be decided on the basis of documents.

6. In view of above facts, this Court does not find any merit in the present application and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19/04/2018
Transmission Date	

