

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1771 of 2011

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Md.Islam @ Islam Mian Sahebjan Mian, resident of Village- Bal, P.O- Chainwa,
Police Station- Ekma, District- Saran (Chapra.)

.... Petitioner

Versus

1. The State of Bihar through the Collector, Saran at Chapra.
2. Dashrath Sharma Late Ramdhan Sharma resident of village- Bal, P.O- Chainwa,
Police Station- Ekma, District- Saran (Chapra.)

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Nalin Vilochan Tiwary, Advocate
Mr. Abinash Kumar, Advocate

For the Respondent/s : Ms. Deepanjali Gupta, A.C. to G.P.10

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 02-08-2018

This writ application has been filed by the defendant of Title Suit No.132 of 1980 pending in the court of Additional Munsif III, Chapra (Saran) to set aside the order dated 29.12.2010 whereby and whereunder the prayer of the petitioner to reject the report of survey knowing Pleader Commissioner and to appoint another survey knowing Pleader Commissioner was refused.

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

3. It appears that the respondent no.2 filed the aforesaid suit for declaration of his title and recovery of possession over the land which was allegedly encroached by this petitioner. The said suit was dismissed against which the plaintiff filed Title Appeal No.25 of 1985



before District Judge. After hearing, the lower appellate court set aside the judgment and decree dated 30.11.1984 passed by learned Munsif and remanded the matter on 16.04.1990 with a direction to give the plaintiff an opportunity to get another survey knowing Pleader Commissioner appointed for scientific measurement of Plot No.1229 to ascertain encroachment. The learned court below was further directed to decide the case after considering the report of newly appointed survey knowing Pleader Commissioner and other evidence on record. The trial court as per direction of 1st appellate court appointed one Mathura Prasad Singh as survey knowing Pleader Commissioner who after holding inspection and measurement submitted his report on 12.06.1996. The petitioner filed objection against that report on 09.07.2008. The learned trial court after hearing both sides rejected the objection of the petitioner and accepted the report of Pleader Commissioner as per order dated 25.07.2008. The said order has not been challenged. In course of trial, the survey knowing Pleader Commissioner was examined as D.W.1 on 08.04.1997. The petitioner cross-examined the said Pleader Commissioner on 13.05.1997, 11.08.1997, 10.02.1999, 28.09.1999 and 19.01.2000. The defendant has not given any suggestion to the Pleader Commissioner as regards his competency to measure the suit land in the capacity of survey knowing Pleader Commissioner.



4. The contention of learned counsel for the petitioner is that the said Commissioner was not competent to be appointed as survey knowing Pleader Commissioner. He was delisted from the panel of survey knowing Pleader Commissioner by this Hon'ble High Court and this fact was not considered by the court below while nominating him as Commissioner. The report of survey knowing Pleader Commissioner is not sustainable on account of his incompetency and so the same is fit to be rejected.

5. The learned counsel for the respondents, on the other hand, submitted that the petitioner never raised objection against competency of Mathura Prasad Singh, who was duly appointed by the learned court below. It has been submitted that the said Pleader Commissioner was ordered to be delisted by this court from the panel of survey knowing Pleader Commissioner but not a single chit of paper in support of his fact has been filed. The contention of learned counsel for the petitioner is baseless and is fit to be rejected.

6. On going through the documents on record I find that the appeal filed by the plaintiff was allowed and the matter was remitted for scientific measurement of suit land by a survey knowing Pleader Commissioner. The court below appointed Sri Mathura Prasad Singh as survey knowing Pleader Commissioner who after measurement submitted his report on 12.06.1996. The petitioner filed objection



against the said report on 09.07.2008. The court below after hearing rejected the objection as per order dated 25.07.2008. The said Mathura Prasad Singh appeared before the court below for his cross-examination on 08.04.1997. He was cross-examined by the petitioner (defendant) on 08.04.1997, 13.05.1997, 11.08.1997, 10.02.1999, 28.09.1999 and 19.01.2000. In cross-examination, there is no suggestion to this effect that he was incompetent to measure the suit land. The petitioner after two years of his cross-examination has filed the petition on 15.05.2010 which was rejected as per impugned order dated 29.12.2010. The court below while rejecting the prayer of petitioner has observed that the objection of petitioner will be considered at the time of final argument before deciding the suit on merit.

7. In view of above facts, I do not find any merit in this writ application. This writ application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

Harish/-

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CAV DATE	
Uploading Date	06.08.2018
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