

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.16277 of 2014**

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1. Sudama Updhyay S/o Late Ram Nath Upadhyay
  2. Santosh Kumar Upadhyay S/o Sudama Upadhyay both R/o village - Surdh,  
Mokram East Part, P.S. Bhagwanpur, P.O. Bankedihara, Distt. - Kaimur  
(Bhabhua )

.... .... Petitioner/s

Versus

1. The State of Bihar through the Collector, Kaimur at Bhabhua
2. The Circle Officer, Bhagwanpur, Distt. - Kaimur ( Bhabhua )
3. The Mukhiya, Gram Panchayat, Mokram, P.S. Bhagwanpur, P.S. Bankedihara,  
Distt. - Kaimur ( Bhabhua )

.... .... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Ganpati Trivedi, Sr. Advocate<br>Mr. Madan Mohan, Advocate<br>Mr. Nirbhay Prashant, Advocate<br>Mr. P.K.Sinha, Advocate<br>Mr. Pallavi Pandey, Advocate |
| For the Respondent/s | : | Mr. Raisul Haque, SC-10<br>Mr. Binay Kumar, AC to SC-10.                                                                                                    |

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**

**ORAL JUDGMENT**

**Date: 06-09-2018**

Petitioners before this Court are plaintiffs in Title Suit No.35 of 2008 pending in the Court of Munsif-II, Bhabua, Kaimur. They have filed this application for quashing the order dated 07.05.2014 whereby and whereunder the prayer of the petitioners to appoint survey knowing pleader commissioner to report about physical feature has been rejected.

2. Heard learned counsel for the petitioners and the respondents State of Bihar.

3. It appears that the petitioners filed the aforesaid suit



before the court below for declaration of their title and possession over the land mentioned in schedule-‘K’ and ‘Kha’ of the plaint and further to declare the land of schedule ‘Ga’ as part of road. The said land stands recorded as ‘Gairmazrua Aam’ in cadastral survey khatiyani and during recent revisional survey, the same has been recorded in the name of State of Bihar. The petitioners claim 55 decimals land by virtue of settlement from ex-landlord in the year 1951. After settlement the plaintiffs allegedly constructed house and are in possession over the said land since long. The plaintiffs filed a petition for appointment of survey knowing pleader commissioner for submitting a report as regards existing physical feature of the suit land after its measurement.

4. The State of Bihar filed counter affidavit and have denied the case of settlement as asserted by the petitioners/plaintiffs. Their case is that the defendant State of Bihar has initiated an encroachment proceeding vide Encroachment Case No.02 of 2017/18 against the plaintiff and others. The order-sheet of said encroachment case has been annexed as Annexure-3 of I.A.No.1803 of 2018. It appears that both petitioners have got their house over the said land. The petitioners/plaintiffs have not sought any relief against the said survey entry in the name of State of Bihar. The case is at initial stage and while rejecting the prayer of the petitioners, the court below has



observed that the plaintiffs have filed the suit for declaration of his title on the basis of settlement and so there was no need to appoint the survey knowing pleader commissioner. I further find that there is no dispute as regards identity of suit land. The plaintiffs only want to collect evidence as regards existence of his house over the land in dispute. The learned court below findings no need of appointment of advocate commissioner has rightly rejected the petition.

5. In view of above discussions, I do not find any merit in this application and is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

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