

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1386 of 2016**

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1. Shobha Kant Chaudhary son of Late Uman Chaudhary resident of Village
& P.O-Hatar Rupauli, P.S-Bhairav Asthan, District-Madhubani (Bihar)

.... Petitioner/s

Versus

1. Sunderwati Devi W/o Sri Sahdeo Chaudhary
2. Sahdeo Chaudhary S/o Late Jagoo Chaudhary Both residents of Village
& P.O-Hatar Rupauli, P.S-Bhairav Asthan, District-Madhubani (Bihar)
3. Shekhar Jha S/o Sri Biswanath Jha
4. Ramesh Jha S/o Late Balram Jha Both residents of village & P.O-Hatar
Rupauli, P.S-Bhairav Asthan, District-Madhubani (Bihar)
5. Jai Kant Chaudhary Son of Late Uman Chaudhary resident of Village &
P.O-Hatar Rupauli P.S-Bhairav Asthan, District-Madhubani (Bihar)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shashi Nath Jha

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA**

ORAL ORDER

3 25-10-2018 The petitioner filed this civil miscellaneous petition against the order dated 01.10.2016 passed in Title Suit No.16 of 2005 by Sub Judge I, Jhanjharpur by which the petition of the petitioner for appointment of Pleader Commissioner to measure the land and report about the structure vesting on C.S.P. No.1126, 1125 and 1134 along with C.S.P. No.1127, 1132 and 1129 has been rejected.

The petitioner is the plaintiff. The petitioner filed the suit for declaration of title and confirmation of possession over C.S. Plot No.1125, 1126, 1127, 1128, 1129, 1130, 1131 and 1132 which were formed in a compact block and petitioners have been



coming in peaceful possession since the lifetime of their ancestors and the plaintiff constructed house thereon. The plaintiff and defendant examined their witnesses. the plaintiff during the pendency of the suit filed petition for appointment of Pleader Commissioner in order to ascertain the facts whether the disputed Plot No.1125 is amalgamated with undisputed Plot No.1126, 1127, 1128, 1129, 1130, 1131 and 1132 and all the plots formed in a compact block and carved out as R.S.P. No.1535 and whether the houses and tubewell and other establishments of the plaintiff are existed over the plot in dispute bearing C.S.P. No.1125 and the same have been coming in peaceful possession of the plaintiff and the houses of the defendants 1st party is standing over undisputed C.S.P. No.1134. Learned Sub Judge heard the plaintiff and the defendants and rejected the petition of the petitioner by the impugned order holding that the suit is running for argument since 24.09.2013 and the petitioner has stated in the plaint that they got Plot No.1125 from the defendants in exchange of Plot No.1134 and, therefore, at this stage, the appointment of Pleader Commissioner is unwarranted and uncalled for and the same is filed only with a view to liner the disposal of the suit.

Mr. Shashi Nath Jha, learned counsel for the petitioner submits that the suit is still pending for evidence. The petitioner-



plaintiff filed a suit for declaration of title and confirmation of possession over the lands mentioned in the schedule of the plaint. The plaintiff also sought relief for recovery of possession, if dispossessed during the pendency of the suit. The plaintiff and defendants are descendants of the same branch and they are agnates. Appointment of Survey Knowing Pleader Commissioner is necessary for just decision of the case but the learned Sub Judge has illegally rejected the petition on the ground that the suit is running for argument and the petition is filed only with a view to liner the suit. It is further submitted that the plaintiff gave C.S. Plot No.1134 having an area of 18 dhurs to the defendants 1st party and the defendants 1st party constructed house thereon. The plaintiff got Plot No.1127, 1129 and 1132 in exchange measuring 12 dhurs 8 ¼ kanma but the defendants disputed the story of exchange with ulterior motive and, therefore, the appointment of Pleader Commissioner is necessary.

On the other hand, learned counsel for the respondents submits that there is no need of appointment of Pleader Commissioner. The Court has rightly dismissed the petition of the petitioner for appointment of Survey Knowing Pleader Commissioner as the same is filed only with a view to linger the disposal of the suit. The suit itself is running for argument since



24.09.2013 and the plaintiff sought adjournment on one pretext or another.

On the basis of the submission of both sides, one and only question arises for consideration is “whether the appointment of Pleader Commissioner on the facts and circumstances of the case is necessary for the determination for the controversies between the parties and the order suffers from any jurisdictional error or illegality?”

It is admitted that plaintiff sought relief for declaration of title and confirmation of possession over the disputed lands of R.S.P. No.1535 measuring an area of 1 katha 10 dhurs of Mauja Hattadh Rupauli, P.S. Bhairab Asthan, Anchal Jhanjharpur, District Madhubani. The case of the plaintiff is that C.S. Plot No.1125 was amalgamated with C.S. Plot No.1126, 1127, 1128, 1129, 1130, 1131 and 1132 and a compact block bearing R.S.P. No.1535 was carved out. The ancestor of the plaintiff got C.S. Plot No.1125 in exchange of C.S. Plot No.1134 and C.S. Plot No.1125 was amalgamated with other plots of the petitioner-plaintiff and houses are standing on the aforesaid plots. The defendants contested the suit and denied the story of exchange. From perusal of the order, it appears that the suit is running for argument since 24.09.2013 and the plaintiff did not file any petition for



appointment of Pleader Commissioner while they were adducing their evidence. The plaintiff sought relief for declaration of title and confirmation of possession on R.S.P. No.1535 which was carved out after amalgamation of different plots as claimed by the plaintiff. It is evident that the appointment of Pleader Commissioner is not at all required as the plaintiff never claimed dispossession from any part of the disputed land during the pendency of the suit. Plot No.1134 are distinct plot from the disputed plots and the plaintiff did not claim encroachment upon any part of the plot. Rule 9 of Order XXVI envisages that if the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or other things, the Court may appoint the Survey Knowing Pleader Commissioner in order to elucidate the facts but the Court does not find any such facts require to be elucidated. Therefore, I find that the learned Sub Judge has rightly dismissed the petition of the plaintiff-petitioner for appointment of Pleader Commissioner and thus, I find that the order does not suffer from any illegality. Consequently, this civil miscellaneous petition is dismissed as devoid of any merit.

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(Prabhat Kumar Jha, J)