

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.673 of 2016

1. Ramayan Yadav Son of Late Devchand Yadav.
2. Madan Yadav Son of Late Devchand Yadav.
3. Triveni Yadav Son of Late Sheo Govind Yadav. All Resident Of Village- Kadamdera, P.O.- Laxmidera, P.S.- Shahpur, District- Bhojpur (Bihar).

... .. Appellant/s

Versus

1. Ram Govind Yadav Son Of Late Ramdas Yadav.
2. Hari Govind Yadav Son Of Late Ramdas Yadav.
3. Mina Yadav Wife Of Late Sheoji Yadav.
4. Ramesh Yadav Son Of Late Shoji Yadav.
5. Sanjay Kumar Yadav Son Of Late Ram Govind Yadav, All Resident Of Village- Kadamdera, P.O.- Laxmidera, P.S.- Shahpur, District- Bhojpur (BIHAR).
6. Guput Yadav Son Of Late Raghubir Yadav, Resident Of Village- Kadamdera, P.O.- Laxmidera, P.S.- Shahpur, District- Bhojpur (BIHAR).
7. Hareram Yadav Son Of Late Satya Narayan Yadav @ Satan Yadav.
8. Gulab Yadav Son Of Late Satya Narayan Yadav @ Satan Yadav.
9. (i) Dahau Yadav
(ii) Raju Yadav
(iii) Most. Mahendri Kuer
10. Paras Yadav
11. Daya Shankar Yadav Son Of Late Yamuna Yadav.
12. Ram Anuj Yadav, Son Of Late Yamuna Yadav.
13. Jay Nath Yadav Son Of Late Yamuna Yadav, Sl. No. 11 To 13 Are Resident Of Village- Kadamdera, P.O.- Laxmidera, P.S.- Shahpur, District- Bhojpur (bihar).

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Abhay Kumar Pandey
For the Respondent/s : Mr. Ashutosh Nath

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

11 26-11-2018 Heard the learned counsel for the petitioners and the

learned counsel for the respondents.

The petitioners are the plaintiffs. The petitioners have
filed this Civil Misc. petition for setting aside the order dated
19.02.2016 passed in Title Suit No. 57 of 2007 by learned



Munsif, Jagdishpur by which the learned Munsif dismissed the petition of the petitioners for appointment of Pleader Commissioner in order to ascertain the extent of encroachment, if any, made by the respondents/ defendants on plot No. 1320.

The petitioners filed the suit for declaration of title and confirmation of possession on plot No. 1320 on the basis of the fact that the land of plot No. 1320 along with other lands was settled in favour of ancestors of the plaintiffs by Dumraon estate in the year 1919 but the respondents filed a petition before the Circle Officer for measurement of land on such Demarcation case No. 3/07-08 was registered and the Circle Officer entrusted the Circle Amin to get the land measured and the Circle Amin without giving any notice or getting the land measured submitted his report. The plaintiffs also sought relief for setting aside the report of the Circle Officer. During the pendency of the suit the issues were recast and issue No. 10 was framed on recast -whether the defendants encroached upon the disputed land and if the encroachment is proved the plaintiffs are entitled to get recovery of possession. Thereafter, the plaintiffs filed the petition for appointment of Pleader Commissioner on 06.11.2015 but the learned Munsif vide order dated 19.02.2016 rejected the petition for appointment of



Pleader Commissioner on the ground that petitioners' earlier petition for appointment of Pleader Commissioner was rejected on 21.06.2012 and the order dated 21.06.2012 became final as the plaintiffs did not prefer any revision before the higher court. Being aggrieved by the aforesaid order, the plaintiffs filed this Civil Misc. petition.

The learned counsel for the petitioners submits that plaintiffs earlier filed petition for appointment of Pleader Commissioner and the same was dismissed on 21.06.2012 but at that time the issue with regard to encroachment on plot No. 1320 by the defendants was not framed. The plaintiffs filed petition for amendment and recast of the issues. On such petition, the issues were recast on 31.01.2014 and issued No.10 was recast which reads as follows:-

“Whether the defendants have encroached upon the disputed land and if it is found that the defendants have encroached upon the disputed land the plaintiffs are entitled to get recovery of possession of the encroached land”.

Thereafter, the plaintiffs filed the petition for appointment of Pleader Commissioner. There is no question of application of res judicata as on earlier occasion there was no issue with regard to encroachment to be decided in the suit and



the plaintiffs had no need to file petition against the order dated 21.06.2012 rejecting their petition for appointment of Pleader Commissioner. Now the plaintiffs have got every reason to get the land measured by Survey Knowing Pleader Commissioner in order to decide the issue No. 10 and if the Pleader Commissioner is not appointed the case of the petitioners would be prejudiced and irreparable loss would be caused to the petitioners.

On the other hand, Mr. Ashutosh Nath, the learned counsel for the respondents, submitted that petitioners earlier moved before this court in Cr. W.J.C. No. 759 of 2007 against the order dated 27.07.2007 in Case No. 6 of 2007 by which report of Anchal Amin was accepted by the S.D.M., Jagdishpur and the S.D.M. ordered for fencing of the land. It is submitted that petition of the plaintiffs for appointment of Pleader Commissioner on earlier occasion was rejected on 21.06.2012 and, therefore, there is no need of appointment of Pleader Commissioner afresh. The appointment of Pleader Commissioner would create confusion since there is report of Amin in Demarcation case No. 3 of 2007 in which it was found that the land belonged to the defendants and the impugned order does not require any interference.



Having considered the submission of both sides and on perusal of records, I find that the one and only question arises for consideration whether the learned Munsif has erred in dismissing the petition of the petitioners for appointment of Pleader Commissioner in order to verify whether the defendants have encroached upon plot No. 1320 and if the defendants have encroached upon the land the plaintiffs are entitled to get recovery of possession.

Admittedly, the plaintiffs filed the suit for declaration of title and confirmation of possession. During the pendency of the suit the plaintiffs filed a petition for appointment of Pleader Commissioner but the learned Munsif vide order dated 21.06.2012 rejected the petition of the plaintiffs for appointment of Pleader Commissioner on the ground that appointment of Pleader Commissioner is not required in view of prayer for declaration of title and confirmation of possession but later on the plaintiffs filed a petition for re-framing of issues and on such issue No. 10 “whether the defendants have encroached upon the disputed land and if encroachment is found the plaintiffs are entitled to get recovery of possession from the dispute land” was framed and thereafter the plaintiffs filed petition for appointment of Pleader Commissioner. It is admitted fact that



prior to institution of the case on the petition of defendants the Circle Officer registered Demarcation case No. 3 of 2007 and got the land of plot No. 1320 measured by Amin. The petitioners filed petition before the S.D.M. for setting aside the report of the Amin on the ground that no notice was given to the petitioners and the land was not measured in their presence but the S.D.M. confirmed the report of Amin and directed the authority, at the instance of the defendants, to fence the land of plot No.1320. Subsequently, the petitioners filed Cr. WJC No. 759 of 2007 and the same was also dismissed with certain observations without going into the merit of the claim of the either side but thereafter the petitioners/ plaintiffs filed the present suit for declaration of title and confirmation of possession after removal of encroachment made by the defendants on plot No. 1320 and for rejecting the report of Amin in Demarcation case No. 3/2007. I find that on such facts the appointment of Pleader Commissioner is required and the learned Munsif has erred in rejecting the petition of the petitioners and failed to exercise jurisdiction vested in it by law by not appointing Pleader Commissioner in order to get the land measured and to ascertain the extent of encroachment, if any, in order to decide issue No. 10.



Accordingly, the order dated 19.02.2016 passed in Title Suit No. 57 of 2007 by learned Munsif, Jagdishpur is set aside. The petition of the plaintiffs for appointment of Pleader Commissioner is allowed. This Civil Misc. petition is, thus, allowed.

(Prabhat Kumar Jha, J)

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