

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7719 of 2015

1. Bhushan Rai son of Late Baldeo Rai
2. Chanarjeet Rai son of Late Deonarayan Rai
3. Janak Rai son of Late Raghuni Rai,
All are residents of village Barharwa Kala Tola Amarpar, P.O.-Barharwa Kala
Via Turkauliya, P.S. Kotwa, District -East Champaran.

... .. Petitioners

Versus

1. Ganesh Rai
2. Sheoshankar Rai
Both are sons of Late Mohichand Rai, Resident of village Barharwa Kala Tola
Amarpar, P.O.-Barharwa Kala Via Turkauliya, P.S. Kotwa, District-East
Champaran.
3. Jamun Devi wife of Balister Yadav, daughter of Late Mohichand Rai,
resident of village Chaumukha, P.O. Sikta, P.S. Sikta, District-West
Champaran.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava, Advocate
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT

Date : 05-12-2018

The defendants 1st set in Title Suit No.683 of 2014
pending in the court of Subordinate Judge IX, Motihari, East
Champaran have filed this writ application for quashing the order
dated 17.04.2015 whereby and whereunder the learned court
below on the prayer of plaintiffs appointed Advocate
Commissioner for submitting report as regards existence of trees
over the suit land and its physical feature.

2. Heard learned counsel for the petitioners. Nobody
appeared for the respondents.



3. It appears that the respondents 1st set filed the aforesaid suit for declaration of their title and recovery of possession over the land mentioned in Schedule II of the plaint. The plaintiffs have mentioned the details of trees standing over the disputed land. The land mentioned in Schedule II is part and parcel of the land mentioned in Schedule I of the plaint. The defendants who are petitioners before this court filed written statement and denied right, title and interest of plaintiffs over the land mentioned in Schedule I and II of the plaint. The petitioners (defendants) at paragraph 18 of the written statement have admitted the existence of trees over the land mentioned in Schedule II of the plaint as asserted by plaintiffs. They have asserted that after death of Raghuni Raut the defendants came in possession over the same. The respondents (plaintiffs) filed petition for appointment of Advocate Commissioner on the ground that the defendants are intending to cut and sell the orchard standing over the said land. The learned court below allowed the said petition and ordered for appointment of Advocate Commissioner.

4. On perusal of impugned order and pleadings of both the parties as pleaded in plaint and written statement which are on record, I find that the plaintiffs have filed the suit for declaration of



their title and recovery of possession over the land mentioned in Schedule II of the plaint. The defendants, on the other hand, assert their own right, title and possession over the same. The pleadings of both parties show that the defendants are in possession over the land mentioned in Schedule II of the plaint. The defendants have not denied the existence of trees as asserted by the plaintiffs in their plaint.

5. In view of admitted case of both the parties, there was no reason for appointment of Advocate Commissioner to ascertain the said fact. It is well settled that the court below should not appoint an Advocate Commissioner for collecting evidence.

6. In view of above discussions, I find that the order appointing Advocate Commissioner is not sustainable. The impugned order is accordingly set aside and this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.12.2018
Transmission Date	

