

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6363 of 2013

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Indradeo Singh S/O Late Dukhi Singh, resident of village- Katauna, P.S-
Kushrupur, Distt- Patna.

.... Petitioner

Versus

1. Rajendra Yadav S/O Late Bodhi Yadav, resident of village- Katauna, P.S-
Kushrupur, Distt- Patna.
2. Suresh Singh S/O Late Rameshwar Singh, resident of village- Katauna, P.S-
Kushrupur, Distt- Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar No.1, Advocate
For the Respondent/s : Mr. Akhileshwar Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-08-2018

This writ application has been filed by the plaintiff of Title
Suit No.141 of 2010 for setting aside the order dated 29.01.2013
whereby and whereunder the petition filed by defendant to appoint
survey knowing Pleader Commissioner was allowed.

2. The contention of learned counsel for the petitioner is
that the suit is at initial stage of hearing. The defendants have filed
written statement denying any encroachment over the suit land. The
trial has not commenced and so it is not proper stage for appointment
of survey knowing Pleader Commissioner. The learned counsel for
the petitioner in support of his contention has cited ruling reported in
2012 (3) PLJR 221 wherein this court has directed the court below to



decide the issue as to whether evidences recorded during trial are sufficient for deciding the issue raised therein and thereafter the court below will decide the issue of appointment of Pleader Commissioner in accordance with law as explained in the forgoing paragraphs. In the case in hand, I find that the defendants filed written statement and when the case was pending for settlement of issues, the defendants filed a petition for appointment of survey knowing Pleader Commissioner. The court below without entering into the merit of the case and without framing issues for determination of suit, has appointed Survey Knowing Pleader Commissioner. There is nothing on record to show as to whether there is any need of appointment of Survey Knowing Pleader Commissioner to measure the land or not. The proper stage would be only after entering into the evidence.

3. In view of above facts, the impugned order appointing Survey Knowing Pleader Commissioner is not sustainable and is accordingly set aside. It would be proper for the court below to appoint Survey Knowing Pleader Commissioner at the stage when the parties have led respective evidences. If the court below is not in a position to ascertain about encroachment of the disputed land in that circumstances in order to ascertain the actual encroachment and identity of land in dispute, the court would appoint Survey Knowing Pleader Commissioner.



4. Accordingly, this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.08.2018
Transmission Date	

