

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15342 of 2014

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1. Ram Pravesh Mahto @ Prabhas S/o Late Harihar Mahto
 2. Shiv Sagar Mahto @ Baua Mahto S/o Late Loko Mahto, Both Resident of Village- Majhauli, P.S.- Cheria Bariarpur, Pargana - Bhushari, Sub Division and District- Begusarai.

.... Petitioner/s

Versus

1. Bina Devi W/o Ramashish Pd. Singh
2. Smt. Saroj Devi W/o Hareman Pd. Singh, Both Resident of Village-Majhauli, P.S.-Cheria Bariarpur, Pargana - Bhushari, Sub Division and District-Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Ravindra Kumar and Partha Sarthy, Advs.

For the Respondent/s : Mr. Binod Kr. Singh and
Ms. Vagisha Pragya Vacaknavi, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 18-08-2018

Petitioners before this Court are defendants of Title Suit No. 186 of 1988 pending in the court of Munsif, Manjhaul, District-Begusarai. They have filed this application for quashing the order dated 23rd July 2014 whereby and whereunder the court below has rejected the 2nd report of Survey Knowing Pleader Commissioner.

2. Heard learned counsels for the petitioners and the respondents.

3. The respondents before this Court filed the aforesaid T.S No. 186 of 1988 for declaration of their title over the land in question on the basis of registered sale deed. The petitioners further sought relief for recovery of possession over the said land. The plaintiffs filed



an application for appointment of Survey Knowing Pleader Commissioner on 13th August 1990 which was allowed and Survey Knowing Pleader Commissioner-Sri Baijnath Prasad submitted its report and other papers on 30th November 1990 which have been marked as exhibits 6 and 6/A. The defendants filed an objection against the report of Advocate Commissioner and the court below as per order dated 6th January 2010 disposed of the said petition without going into the merit of report observing that the report of Survey Knowing Pleader Commissioner will be considered at the time of judgment. In course of evidence, the defendants also filed a petition for appointment of Advocate Commissioner. The matter was heard and with the consent of both the parties, another Survey Knowing Pleader Commissioner was appointed. After holding inspection, the second Survey Knowing Pleader Commissioner submitted its report. The plaintiffs filed an objection against the said report. The court below after hearing both sides refused to accept the second report observing that the first report has not been rejected. The court below thus accepted the objection petition of the plaintiffs and rejected the 2nd report of Advocate Commissioner without examining the same on merit. As regards earlier report, the court below observed that the report of Advocate Commissioner would be considered at the time of judgment. However, the court below has rejected the second report in



face of earlier report without considering the merit and recording dissatisfaction over the second report. The impugned order as such is not sustainable. It would be just and proper for the court below to consider both the reports at the time of delivering judgment.

4. In view of above facts, the impugned order refusing to consider the report of Advocate Commissioner is set aside and writ this application is accordingly allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

