

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.402 of 2018**

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1. Kyamudin Ahmad S/o Late Sakur Miya Resident of Village -
Maksudpur, P.S. Uchakagaon, District - Gopalganj.

.... Petitioner/s

Versus

1. Asgari Khatoon W/o Late Safayat Mian resident of Village -
Makasudpur, P.S.Uchakagaon, District Gopalganj.
2. Sarjuddin Mian
3. Sharif Mian Both 2 & 3 are sons of Late Sakur Mian
4. Islam Mian Son of Late Ainul Mian
5. Nimazan Khatoon W/o Kyamudin Miyan All are residents of Village -
Maksudpur, P.S. Uchakagaon, District Gopalganj.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Javed Aslam
For the Respondent/s : Mr.

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

2 09-08-2018 Heard learned counsel for the petitioner.

The petitioner has filed this civil miscellaneous petition against the order dated 10.08.2017 passed in Title Suit No.466 of 2011 by Sub Judge 11th, Gopalganj by which the petition of the defendant filed under Order 26 Rule 10 of the Code of Civil Procedure for appointment of Pleader Commissioner in order to find out the physical feature of the disputed land has been rejected.

The learned counsel for the petitioner submits that during the course of hearing of the suit, the defendant No.4 who claimed the title over the land by virtue of gift deed asserted her possession over the purchased land but her evidence is not true as there is Imambara and other structure on the dispute land, therefore, the



appointment of Pleader Commissioner is necessary but the learned Sub Judge has illegally rejected the petition.

Having considered the submission of the learned counsel for the petitioner and on perusal of the order impugned, it appears that the plaintiff filed the suit for declaration of title by virtue of the gift deed executed in favour of plaintiff, Asgari Khatoon. The defendant denied the factum of gift and also challenged genuineness of the gift. The defendant claimed possession over the land. In view of this fact, the appointment of Pleader Commissioner at the instance of the defendant is for the purpose of collecting evidence in a suit in which subject matter is the deed of gift. Therefore, I find that the learned Sub Judge has rightly dismissed the petition of the petitioner for appointment of Survey Knowing Pleader Commissioner.

So far imposition of cost is concerned, the same does not appear to be reasonable and that portion of the order is set aside. The defendant shall not pay the cost to the plaintiff.

Taking into consideration the facts aforesaid, I do not find any illegality or error in the order impugned. Accordingly, this civil miscellaneous petition is dismissed.

Saurabh/-

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(Prabhat Kumar Jha, J)

