

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16949 of 2010

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Brij Kishore Pandey S/O Late Satyanarayan Pandey R/O Village- Rith, P.O.-
Ekma, P.S. Ekma, Distt-Saran.

.... Petitioner/s

Versus

1. Bijay Shankar Pandey S/O Late Udai Narayan Pandey R/O Vill Rith, P.O.&
P.S.Ekma, Distt-Saran
2. Ashok @ Lal Babu Pandey S/O Late Udai Narayan Pandey R/O Vill Rith,
P.O.& P.S.Ekma, Distt-Saran
3. Sri Ram Pandey S/O Late Udai Narayan Pandey R/O Vill Rith, P.O.&
P.S.Ekma, Distt-Saran
4. Raja Ram Pandey S/O Late Udai Narayan Pandey R/O Vill Rith, P.O.&
P.S.Ekma, Distt-Saran
5. Hare Krishna Pandey S/O Late Udai Narayan Pandey R/O Vill Rith, P.O.&
P.S.Ekma, Distt-Saran

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nagendra Rai, Advocate Mr. Navin Nikunj, Advocate
For the Respondent/s	:	Mr. Sudama Singh, Advocate Mr. S.K.Mishra, Advocate Mr. R.K.Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 31-07-2018

Petitioner before this Court is plaintiff of Title Suit No.67 of 2001 pending in the Court of Munsif-I, Chapra. He has filed this application for quashing the order dated 20.07.2010 whereby and whereunder his prayer to appoint the Survey Knowing Pleader Commissioner for scientific measurement of suit land was rejected.

2. Heard learned counsel for the petitioner and the learned counsel for the respondents.

3. It appears that the petitioner filed the aforesaid suit in the year of 2001 for declaration that the well existing over four dhoores land as mentioned in



schedule-1 of the plaint is joint property of both the parties and any construction made by defendants over any portion of said land is wrong. The plaintiff further sought relief that the land mentioned in schedule-2 of the plaint belongs to plaintiff on the basis of deed of exchange over which the defendants had or have no right to make any construction. The petitioner has prayed to remove the structure from schedule-2 of the land which was constructed by the defendants. The defendants in their written statement have denied the case of petitioner. They have asserted that they are in possession over the land mentioned in schedule-2 of the plaint since last 29 years and so the plaintiff is not entitled to recovery of possession. It has been submitted that in order to ascertain the actual encroachment made by the defendants, the appointment of Survey Knowing Pleader Commissioner is essential.

4. The learned counsel for the respondents on the other hand submits that the plaintiff has filed the suit with specific area and boundary as mentioned in schedule-1 and 2 of the plaint and so there is no ambiguity in ascertaining the land in dispute. The plaintiff only wants to collect some evidence by appointment of Survey Knowing Pleader Commissioner. The court below has rightly rejected the said petition. From the impugned order and documents on record, I find that the suit was filed in the year 2001. The defendants filed their written statement on 15.04.2005 and after framing issues, the trial proceeded and both the parties have closed their evidence. The plaintiff filed the petition on 09.07.2009, i.e., after eight years of filing of the suit. The description of land as mentioned in schedule-1 and 2 of the plaint is specific. The claim of the plaintiff over schedule-2 of the land is on the basis of deed of exchange. The matter in dispute has to be adjudicated on the basis of oral and documentary evidence. It is not a case of encroachment rather it is a case of recovery of possession over the land on the



basis of deed of exchange. The court below has rightly rejected the petition which has been filed at belated stage with a sole purpose of collecting evidence.

5. In view of the above facts, I do not find any merit in this application. Accordingly, this application is dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.08.2018
Transmission Date	N/A

