

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1107 of 2018**

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Smt. Indu Devi w/o Bhanu Praasad Sah r/o village Hardia Tappa Gopala, PO Narkatiyaganj, PS Sikarpur, District West Champaran.

... .. Petitioner/s

Versus

1. Bhola Mistri s/o Sukhram Mistri
2. Rai Bahadur Baitha
3. Awdhesh Baitha
4. Om Prakash Baitha
5. Muna Baitha all s/o late Ram Bachan Baitha
6. Shyam Lal Baitha s/o Sahindra Baitha
7. Shambhu Baitha s/o late Sahindra Baitha All are r/o village Hardia Tappa Gopala, PO Narkatiyaganj, PS Sikarpur, District - West Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Chandra Kant
For the Respondent/s : Mr.

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

Date : 29-11-2018

Heard Mr. Chandra Kant, learned counsel appearing
on behalf of the petitioner.

The petitioner filed this civil miscellaneous petition to set aside the order dated 06.04.2018 passed by Munsif, Narkatiyaganj in Title Suit No.127 of 1998 by which the learned Munsif rejected the petition of the petitioner for appointment of Survey Knowing Pleader Commissioner.

The facts relevant for disposal of this civil miscellaneous petition can be summarised as follows:

The petitioner is the plaintiff. The petitioner filed present title suit for declaration of title and confirmation of



possession holding that the sale deed executed by defendant No.2 in favour of defendant No.1 with regard to 6 dhurs of land duly mentioned in Schedule II of the plaint is collusive and executed by a person who has no title over the land and the same is not binding on the plaintiff. The case of the plaintiff is that Bhukhal Baitha was the owner of Plot Nos.41 and 42 and after his death, his four sons, namely, Mahindra Baitha, Sahindra Baitha, Ram Bachan Baitha and Ramautar Baitha came in possession of the property and there was 8 ft. rasta in the middle of Plot No.42 from east to west. All the four brothers partitioned the land of Plot Nos.41 and 42 and each got 1 katha 18 dhurs land. After death of Sahindra Baitha, his two sons, defendant Nos.4 and 5 partitioned the land of 1 katha 18 dhurs in two parts and each got 19 dhurs. Petitioner purchased 15 dhurs of land from defendant No.4 on 26.04.1996 by three sale deeds. Defendant No.2 also executed the sale deed on 27.05.1998 in favour of defendant No.1 with regard to 6 dhurs land of Plot No.42 compelling the plaintiff to file the suit. When the suit was posted for argument, the petitioner filed a petition for appointment of Pleader Commissioner. Learned court below after hearing both sides rejected the petition holding that the plaintiff sought relief for declaration of title and confirmation of



possession after holding that the sale deed executed by defendant No.2 in favour of defendant No.1 on 27.05.1998 is a sham and collusive transaction and the defendant No.2 had no title over the land and, therefore, sale deed is not binding on the plaintiff. In order to decide the aforesaid question, the appointment of Pleader Commissioner is not at all required. The petitioner-plaintiff being aggrieved by the aforesaid order dated 06.04.2018 filed this civil miscellaneous petition.

The one and only question arises for consideration “whether the order impugned refusing to appoint Pleader Commissioner to measure the land mentioned in Schedule II of the plaint is essential for deciding the issues of right, title and possession of the plaintiff after holding that the sale deed executed by defendant No.2 in favour of defendant No.1 on 27.05.1998 is sham transaction?”

Mr. Chandra Kant, learned counsel for the petitioner submits that the appointment of Pleader Commissioner is essential for just decision of the issues in the suit. Plot Nos.41 and 42 are amalgamated with each other out of which the plaintiff purchased 15 decimals of land from one of the sons of Sahindra Baitha who got the land in his share after partition. The location of the suit property is seriously disputed by the



defendant but the court below has erroneously and illegally rejected the petition of the petitioner that the appointment of Pleader Commissioner is not at all required for deciding the issues framed in the suit. Learned counsel for the petitioner placed his reliance on the judgment of Orissa High Court reported in AIR 1988 Orissa 248(Mahendranath Parida v. Purnananda Parida and others), AIR 2006 NOC 390(Andh. Pra.) (S. Singa Reddy and others v. K. Ramachandra Reddy), 2013(4) PLJR 763(Tribhuban Kumar Rai @ Tribhuban Rai v. Ram Dhyan Rai and Ors.) and 2005(2) PLJR 524(Ram Shekhar Singh v. State Bank of India & Ors.).

Order XXVI Rule 9 C.P.C. reads as under:

**“Commission to make local investigation:
In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the marked value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.]**

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

From bare perusal of the provisions, it appears that the provisions confers a discretion on the court for appointment



of Pleader Commissioner. It is well known that the discretion has to be exercised in judicious and sound manner. The provisions itself shows that if it deems necessary that local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the court may appoint Pleader Commissioner. The pre-requisite for appointment of Pleader Commissioner is that when the controversy is with regard to identification, location or measurement of the land but from perusal of the plaint and the relief sought for by the plaintiff in the plaint, it appears that plaintiff sought declaration of title and confirmation of possession over the plot mentioned in Schedule II of the plaint on the basis of sale deed executed by one of the sons of Sahindra Baitha. The plaintiff stated in the plaint that Sahindra Baitha had two sons and there was partition among the two sons who each got 19 dhurs land in their share. The sale deed itself described the boundary of the land purchased by the petitioner. The plaintiff did not state anywhere in the plaint about the existence of dispute with regard to location, identification and measurement of the land. In absence of such dispute with regard to identification, measurement and location of the disputed land, the learned Munsif has rightly dismissed the petition of the petitioner for appointment of Pleader



Commissioner. On perusal of the judgments on which the learned counsel for the petitioner relied upon, I find that in all the four cases, it has been held that the pre-requisite for appointment of Pleader Commissioner is the existence of controversy with regard to identification, location and measurement of the land. Having considered the facts aforesaid, I do not find any merit in this civil miscellaneous petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.12.2018
Transmission Date	

