

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21021 of 2013

Mostt. Shyam Kumari Devi, Wife of Sri Kaushal Kishore Singh, Resident of Village - Rupaspur, Police Station - Danapur (Now Rupaspur), District – Patna.

... .. Petitioner

Versus

1(a). Lalati Devi, W/o- Ramayan Rai, resident of Village- Ajim Chak, Post Office- Fatehpur, Police Station- Gopalpur (Gaurichak), District- Patna.

2. Bhola Rai Son of Deo Lal Rai, Resident of Village - Rupaspur, Police Station - Danapur (Now Rupaspur), District – Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Mahesh Prasad, Advocate

For the Respondent/s : Mr. Jharkhandi Upadhyay, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT

Date : 10-12-2018

This writ application has been filed for quashing the order dated 13.09.2013 passed by learned Additional District Judge IV, Danapur in Title Appeal No.245 of 2007 whereby and whereunder the learned appellate court appointed Pleader Commissioner to enquire and submit report on the points mentioned in the petition.

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

3. The petitioner filed Title Suit No.35 of 1987 on the file of Munsif, Danapur for declaration of her title and recovery of possession over the land mentioned in Schedule III of the plaint. As per case of petitioner, the disputed land measuring 3 ½ feet x



105 feet as shown in red colour of the sketch map and mentioned in Schedule III of the plaint is part and parcel of her land comprised in plot no.634. The defendants have their land towards south of said plot under plot no.633 and they have encroached the said land for which the plaintiff has sought relief of recovery of possession. In course of trial, a Pleader Commissioner was appointed at the instance of the petitioner who inspected and measured the land of both parties and submitted report to this effect that no road or passage was existing over plot no.634 belonging to the plaintiff. The said Pleader Commissioner was cross-examined by the defendants. The trial court decreed the suit in part but it refused to grant relief of recovery of possession from the portion of disputed land. The petitioner being aggrieved by the said judgment filed Title Appeal No.245 of 2007. The defendants have not filed any cross-appeal against the findings of court below. They filed a petition on 28.05.2013 for appointment of an Advocate Commissioner which was allowed.

4. After hearing both sides and on going through the materials on record I find that the petitioner filed the appeal in the year 2007 and after a gap of about seven years, the defendant (respondent) filed petition for appointment of Advocate Commissioner. The court below has already considered the report



of Advocate Commissioner and has given its finding which has not been challenged by the defendant. The court below failed to appreciate the said fact that no cross-appeal has been filed against the findings of trial court. It is well settled that the appellate court should not allow the application for appointment of Advocate Commissioner for collecting evidence. The court below has appointed the Advocate Commissioner without expressing any dissatisfaction over the earlier report which has already been considered by trial court.

5. In view of above discussions I find that the impugned order appointing Advocate Commissioner is not sustainable and is accordingly set aside.

6. This writ application is allowed.

(Sanjay Kumar, J)

Harish/-

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CAV DATE	
Uploading Date	11.12.2018
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