

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22723 of 2012

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1. Md. Allauddin S/o Late Sakhawat Choudhary,
 2. Md. Ashfaq Alam S/o Late Md. Moinuddin
 3. Md. Mushtaque Alam S/o Late Moinuddin
 4. Md. Jamaluddin S/o Late Moinuddin

All are resident of village - Sonebarsa, P.S.- Sonbarsa Raj, District- Saharsa.

.... Petitioner/s

Versus

1. Dinesh Bishwash S/o Late Jagrup Kamat
2. Shiv Narayan Bishwash S/o Late Jagrup Kamat
3. Ram Bishwash S/o Late Jagrup Kamat
4. Umesh Bishwash S/o Late Jagrup Kamat
5. Jitan Kamat S/o Late Upendra Kamat
6. Arjun Kamat S/o Late Upendra Kamat

All are resident of village - Sonebarsa, P.S.- Sonebarsa Raj, District- Saharsa.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amar Nath Jha, Adv.

For the Respondent/s : Mr. Balkrishna Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 27-08-2018

Petitioners before this Court are plaintiffs in Title Suit No. 102 of 2001 pending in the court of Munsif, Saharsa. They have filed this application for quashing the order dated 16.12.2011 whereby and whereunder prayer of the petitioners to appoint Survey Knowing Pleader Commissioner (herein after referred to as "Pleader Commissioner") was rejected.

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

3. It appears that petitioners filed the aforesaid suit for



declaration of their title and recovery of possession over two decimal land of plot no. 1551 corresponding to cadastral survey plot no. 968 as mentioned in schedule-II of the plaint.

4. According to the petitioners, the said land was acquired by their ancestor by virtue of registered sale deed dated 19.03.1952. The defendants fraudulently and illegally started claiming the adjoining land comprised in plot no. 1082 which is part of village road recorded as 'Gair Mazarua Aam' land. The defendants encroached the land of the petitioners-plaintiffs and took possession over the same and so the petitioners filed a petition for appointment of Pleader Commissioner for ascertaining the physical feature of the said land. The defendants filed rejoinder denying the allegation made by the plaintiffs and the court below after hearing both sides refused to appoint Pleader Commissioner.

5. On perusal of impugned order and documents on record, I find that the suit was filed in the year 2001 for declaration of their title and recovery of possession over two decimal land of revisional survey plot no. 1551 of khata no. 615. The description of the suit land mentioned in schedule-II of the plaint shows that there exist a road towards south and east of disputed land. The defendants on the other hand claim title over cadastral survey plot no. 1082 corresponding to revisional survey plot no. 1551 by virtue of



registered sale deeds from different person. The defendants filed their written statement on 30.01.2004 and after settlement of issues, both parties have already examined their witnesses and the case is pending for final argument. The court below while refusing the prayer of the petitioners to appoint Pleader Commissioner has observed that no Pleader Commissioner can be appointed to collect evidence at the fag end of trial to fill up the lacuna in the evidence. The petitioners have not sought any relief with respect to cadastral survey plot no. 1082 which is not in dispute.

6. In view of above facts, I find that the court below has not committed any error in refusing the prayer of the petitioners to appoint Pleader Commissioner. This application being devoid of merit is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04/09/2018
Transmission Date	N/A

