

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19317 of 2016

Most. Chandeshwari Devi

... .. Petitioner/s

Versus

The State Of Bihar & Ors

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kumar Binode Bariar

For the Respondent/s : Mr. Sajid Salim Khan-SC25

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 14-12-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner has filed this writ petition for issuance of appropriate writ/writs, order/orders, direction/directions and writ in the nature of mandamus commanding the respondents to get the land properly demarcated, construct boundary and erect pucca pillar in view of payment deposited for measurement of land, final decree passed in favour of petitioner in Execution Case No.2(A) of 2005.

Learned counsel for the petitioner submits that the petitioner filed Title Suit No.489 of 1995 for partition of ancestral property appertaining to land of Khata No.72 Plot No.355 and 363 measuring 4 decimals and 10 decimals respectively along with other lands and property mentioned in Schedule I to IV of the plaint. Final decree was passed on



03.03.2003. Advocate Commissioner was appointed and the Advocate Commissioner submitted his report on 14.08.2004. The final decree was passed thereafter. The petitioner filed Execution Case No.2(A) of 2005 in the Court of Sub Judge IV, Patna and the Nazir and other officials of the court delivered the possession of the land to the petitioner on 17.06.2009 after recording the fact that possession has already been handed over to the petitioner to her full satisfaction but the petitioner again filed petition before the C.O. for demarcation of the land. It is submitted that many persons have encroached upon the land of the petitioner and, therefore, he filed petition for demarcation but it appears that petitioner has not filed petition for only demarcation but he made prayer that his land be measured and boundary wall be erected/constructed all around the land of the petitioner. In my view, the C.O. cannot construct boundary wall on the land of the petitioner. Since many persons have encroached according to the case of the petitioner upon the land of the petitioner, therefore, before removal of encroachment, the C.O. cannot remove the encroachment made by many persons on the land of the petitioner. The petitioner has to take resort to the proper remedy for removal of encroachment from his land. In this view of the fact, this writ petition is disposed of with a



direction to the petitioner to resort to proper remedy such as suit or any other proceeding in accordance with law for removal of encroachment from his land which was handed over to him in Execution Case No.2(A) of 2005. Accordingly, with the aforesaid direction, this writ petition is disposed of.

(Prabhat Kumar Jha, J)

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