

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.239 of 2019**

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Guru Nandan Prasad Sah aged about 81 years Male, son of Late Lakhi Sah
resident of Shiv Charan Sah Lane, Kalabganj , P.S. Mojahidpur, District-
Bhagalpur

... .. Petitioner

Versus

The State of Bihar through the Collector Bhagalpur

... .. Respondent

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Appearance :

For the Petitioner : Mr.Rajendra Kumar Jain, Advocate
For the Respondents : Mr.Md. Raisul Haque, SC10

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 19-04-2019

Heard learned counsel for the petitioner and learned
counsel for the State.

2. This application under Article 227 of the
Constitution of India has been filed by the petitioner for setting
aside the order dated 25.10.2018 passed by learned Sub-Judge-IX,
Bhagalpur in Title Suit No.250 of 2005 whereby the application
filed by the petitioner under Order 26 Rule 9 read with Section 151
of the Code of Civil Procedure (for short ‘CPC’) for appointment
of pleader commissioner to see physical feature of the suit land
and make local inspection has been rejected.

3. Learned counsel appearing for the petitioner
submitted that the order impugned is not sustainable in law. The
court below has failed to appreciate the provision prescribed under



Order 26 Rule 9 of the CPC. It ought to have appointed pleader commissioner on the request of the plaintiff-petitioner for local inspection for the purpose of elucidating matter in dispute by seeing the physical feature of the suit land. The order impugned has been passed mechanically without taking into consideration the necessity of the appointment of pleader commissioner in the facts and circumstances of the case.

4. Per contra, learned counsel appearing for the State submitted that the provisions prescribed under Order 26 Rule 9 of the CPC is not to assist a party to collect evidence. The court below has rightly rejected the application of the petitioner, as the petitioner failed to give any reason for appointment of pleader commissioner. In case, the petitioner wants to prove any fact, he can prove the same by adducing evidence. However, such evidence cannot be gathered for him by the court by way of appointment of pleader commissioner.

5. I have heard learned counsel for the parties and carefully perused the record.

6. Learned counsel for the State has rightly submitted that Order 26 Rule 9 of the CPC is not to assist a party to collect evidence. The power is conferred upon the court to appoint a pleader commissioner for local inspection in order that



the court may better appreciate the evidence already on record. Since the petitioner failed to give any reason for appointment of a pleader commissioner for local inspection, no error can be found with the order impugned whereby the trial court rejected the application of the petitioner. The power to appoint pleader commissioner is discretionary in nature. Since the trial court did not think it necessary for the purpose of elucidating any matter in dispute, I see no reason to interfere with the order impugned under the supervisory jurisdiction under Article 227 of the Constitution of India.

7. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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