

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.152 of 2019

Vidya Devi W/o Vijay Prasad Mohalla-Telbigha, Rang Bahadur Road, P.s.-
Kotwali, Distt.-Gaya at present at Mohalla-Janta Colony, Bairangi, P.s.-Delha,
Distt.-Gaya

... .. Petitioner

Versus

Sarita Devi W/o Jagdish Prasad Mathur Resident of Mohalla- Murarpur Devi
Asthan, P.s.-Kotwali, Distt.-Gaya

... .. Respondent

Appearance :

For the Appellant/s : Mr.Pramod Kumar

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 23-08-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 05.12.2018 passed by the learned Munsif-1, Gaya in Title Suit No. 26 of 2007 by which he has dismissed the objection petition filed by the petitioner on 11.05.2018 to set aside the report of the survey knowing pleader commissioner to ascertain the encroachment done on the suit land.

3. Learned counsel appearing for the petitioner submitted that the court below has failed to appreciate that the survey knowing pleader commissioner has admitted that though he ought to have taken a fixed point for measuring the suit land, he



has not done so while measuring the suit land. The learned Munsif has also failed to appreciate that the vendor of the parties was the same person and the report of the survey knowing pleader commissioner nowhere mentioned about the production of the document in the shape of the map prepared by the vendor of the parties.

4. Having heard the petitioner and perused the order impugned, I find that the Title Suit No. 26 of 2017 was filed by the petitioner on 21.04.2007, which was admitted on 24.04.2017. Her evidence was closed on 23.05.2017 and the defendant's evidence was closed on 04.03.2013. On the application of the petitioner, a survey knowing pleader commissioner was appointed vide order dated 07.06.2013. The pleader commissioner submitted his report on 02.09.2014. He was examined and cross-examined on 02.05.2017. Almost four years after the report was submitted and after about a year since the date of examination of the pleader commissioner as a witness, the plaintiff-petitioner filed an application on 11.05.2018 for setting aside the report of the pleader commissioner.

5. The suit has been filed by the petitioner for declaration that a passage of 10 feet left by the owner is for common and beneficial enjoyment of the plaintiff, defendant and



the persons living in colony and for a decree of mandatory injunction against the defendant directing her to remove encroachment shown by ABCD appended with the plaint by fixing a date and if the defendant does not remove the encroachment within the date fixed, the same be removed through the agency of the court at the cost of the defendant.

6. The learned Munsif has recorded in the order impugned that no clear specification and area with boundary of suit land is mentioned in the plaint. He has also recorded that both the parties have adduced their evidences and report of the pleader commissioner is based on the finding made at the spot. At a belated stage, the issue has been raised by the petitioner that the report is unscientific and that the pleader commissioner has not followed the prescribed method and rules for measurement of land. The learned Munsif taking note of relevant rule under Order XXVI of the CPC has observed that the decision of any suit does not depend upon the report of the pleader commissioner. Hence, the objections raised by the petitioner has been held to be meritless.

7. Regard being had to the findings arrived at by the learned Munsif, I am of the opinion that the order impugned is neither without jurisdiction nor perverse. I see no reason to



interfere with the same in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

8. The application is rejected.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.09.2019
Transmission Date	

