

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.123 of 2019

Subhash Prasad Son of Late Ganesh Prasad resident of Mohalla- Purani Bazar, Narkatiaganj, P.O.- Shikarpur, Police Station- Shikarpur, District- West Champaran.

... .. Appellant/s

Versus

1. Iftekhar Ahmad Alias Munna Tyagi, son of Late Md. Mustafa resident of Mohalla- Block Road, Hardia, Narkatiaganj, Ward No. 21, Post- Shikarpur, Police Station- Shikarpur, District- West Champaran.
2. Mohammad Ashafaque Alam son of Late Md. Mustafa resident of Mohalla- Block Road, Hardia, Narkatiaganj, Ward No. 21, Post- Shikarpur, Police Station- Shikarpur, District- West Champaran.
3. Mohammad Imteyaz Alam @ Heerajee son of Md. Mustafa resident of Mohalla- Block Road, Hardia, Narkatiaganj, Ward No. 21, Post- Shikarpur, Police Station- Shikarpur, District- West Champaran.

Respondents 1st Party/Defendants 1st Party.

4. Savitri Devi wife of Vishwanath Prasad resident of Mohalla- Purani Bazar Samittee Road, Narkatiaganj, Post Office- Narkatiaganj, Police Station- Shikarpur, District- West Champaran.
5. Niraj Kumar son of Suresh Prasad resident of Krishi Bazar Road Ward No. 3, Narkatiaganj, Post Office- Narkatiaganj, Police Station- Shikarpur, District- West Champaran.
6. Manoj Kumar. son of Suresh Prasad resident of Krishi Bazar Road Ward No. 3, Narkatiaganj, Post Office- Narkatiaganj, Police Station- Shikarpur, District- West Champaran.
7. Md. Kaish son of Ish Mohammad Ansari resident of Krishi Bazar Road Ward No. 3, Narkatiaganj, Post Office- Narkatiaganj, Police Station- Shikarpur, District- West Champaran.

. ... Respondents 2nd Party/Defendants 2nd Party.

Appearance :

For the Appellant/s	:	Mr.Shiv Kumar Dwivedy
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 04-02-2019

This application under Article 226 of the Constitution of India has been filed by the petitioner for setting aside part of the order dated 27.10.2018 passed by the learned Sub-Judge, Narkatiaganj, West Champaran in Title Suit No. 85 of 2016 by



which the petition dated 26.10.2018 filed by him under Order 26, Rule 10-A of the Code of Civil Procedure (for short “CPC”) has been dismissed.

2. Learned counsel for the petitioner submitted that the court below while passing the impugned order has completely ignored the principles of law and justice. If the order is allowed to continue, the same would result in miscarriage of justice. He contended that in the facts and circumstances of the case scientific investigation by the survey knowing pleader commissioner for the suit land is a must.

3. The petitioner had filed Title Suit No. 85 of 2016 before the court of Sub-Judge, Narkatiyaganj, West Champaran for declaration of his right, title and possession over the suit land mentioned in schedule 1 of the plaint. In the said proceeding, the petitioner filed two petitions, one under Order 1, Rule 10 of the CPC to add respondent nos. 5 to 7 as party to the suit and another under Order 6, Rule 17 of the CPC to amend the plaint under the changed circumstances. He had filed another petition on 26.10.2018 under Order 26, Rule 10-A of the CPC for scientific investigation by the survey knowing pleader commissioner for the suit land. On 21.12.2016, the respondents 1st set appeared in the suit and filed their written statement and denied the averments of



the plaintiff. They also claimed their title over the suit land and others on the basis of registered sale deed dated 16.06.1955 said to have been executed by one Durga Prasad in favour of Md. Mustafa on 16.06.1955 with respect to 5 katha 1 dhur of land. On 27.10.2018, the respondents 1st set and 2nd set filed their rejoinders against the petition filed by the petitioner under Order 26, Rule 10-A of the CPC.

4. Vide order dated 27.10.2018, the court below while allowing the applications of the petitioner filed under Order 1, Rule 10 of the CPC and Order 6, Rule 17 of the CPC, dismissed the petition filed under Order 26, Rule 10-A of the CPC mainly on the ground that appointment of a commission for scientific investigation cannot be allowed for the purpose of collecting evidence.

5. From the order impugned as well as the pleadings made by the petitioner, it would be apparent that the petitioner had filed the application under Order 26, Rule 10-A of the CPC at the fag end of the trial.

6. The main issue in the suit is whether the petitioner has right, title and possession over the suit land or not. In the opinion of the court below there was no question involved in the suit which required any scientific investigation.



7. It would be relevant to note here that Order 26, Rule 9 CPC provides for commissions to make local investigation. Under the said provision, in any suit in which the court deems local investigation a requisite for the purpose of elucidating any matter in dispute, the court, may issue a commission to such person as it thinks fit, direct him to make such investigation and report thereon to the court.

8. Similarly, under Order 26, Rule 10-A of the CPC, the Court has to decide as to whether the scientific investigation is necessary for the purpose of deciding the case. Only if the court considers it necessary or expedient in the interests of justice so to do, it would issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

9. Since the main issue in the instant case is relating to right, title and possession of the petitioner over the suit land, the court below has rightly held that there is no requirement for appointment of any commission for scientific investigation. It is well settled position in law that a commission cannot be appointed for the purpose of collecting evidence on behalf of the parties.

10. The scope of jurisdiction under Article 227 of the Constitution is restricted. It has to be exercised sparingly and in



appropriate cases in order to keep the subordinate courts within the bounds of their authority.

11. Since the order impugned is neither without jurisdiction nor it suffers from any error, no interference is warranted by this Court.

12. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

pradeep/sneha

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.02.2019
Transmission Date	

