

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.121 of 2019**

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Ram Babu Khetan son of Mahavir Prasad Khetan, resident of Village/  
Mohalla- Shivajee Nagar, P.O.- Lalbagh, P.S. Darbhanga, District-  
Darbhanga.

... .. Petitioner

Versus

1. Mohan Lal Khetan son of Sri Mahabir Prasad Khetan
2. Arun Kumar Khetan
3. Ashok Kumar Khetan

Both sons of Mohan Lal Khetan

All resident of Mohalla- Shamsheganj, Ward No. 14, P.O.- Lalbagh, P.S. and  
District- Darbhanga.

..... Respondent 1<sup>st</sup> Set.

4. Jugal Kishore Khetan son of Sri Mahabir Khetan
5. Raj Kuar Khetan
6. Anil Kumar Khetan
7. Anup Kumar Khetan

All sons of Jugal Kishore Khetan

All residents of Mohalla- Shamsheganj, Ward No. 14, P.O.- Lalbagh, P.S. and  
District- Darbhanga.

.....Respondent -2<sup>nd</sup> Set.

8. Manager Transport Corporation of India, Darbhanga having its residence in  
Holding No. 18 at Mohalla- Saud and Office in Holding No. 314 at Mohalla-  
Saudagar, Town- Darbhanga.
9. Gauri Shankar Agrawal son of Narsingh Das Agrawal presently residing at  
Mohalla- Saudagar, Town and District- Darbhanga.
10. Bibi Jobaida Khatoon wife of Late Haj Md. Nasiruddin
11. Md. Madani son of Md. Mustaquim

Both residents of Mohalla- Maulaganj Town- Darbhanga, at present Mohalla-  
Shamsheganj (Bara Bazar), Town- Darbhanga, P.O.- Lalbagh, District-  
Darbhanga.

...Respondent 3<sup>rd</sup> Set

12. Smt. Bimla Devi wife of Sri Jugal Kishore Khetan resident of Mohalla-  
Shamsheganj, P.O.- Lalbagh, District- Darbhanga.



13. Smt. Urmila Devi wife of Sri Gopal Prasad Jalan C/o Jalan Bastralay, at Mohalla- Mina Bazar, P.O. ...., District- Motihari.
14. Sushila Devi wife of Sri Dwarika Prasad Agrawal At and P.O. Kalyan Narain Anchal- Birganj Nepal, Via- Raxaul.
15. Smt. Laxmi Devi wife of Sri Gauri Shankar Goet, son of Mahabir Prasad Khetan resident of Mohalla- Shamsherganj, Bara Bazar, P.O.- Lalbagh, District- Darbhanga.
16. Sunita Devi Khetan wife of Raj Kumar Khetan resident of Mohalla- Shamsherganj, P.O.- Lalbagh, District- Darbhanga.
17. Suman Devi Khetan wife of Sri Anil Kumar Khetan resident of Mohalla- Shamsherganj, P.O.- Lalbagh, District- Darbhanga.

... .. Respondent 4<sup>th</sup> Set.

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**Appearance :**

For the Appellant/s : Mr.Bhubneshwar Prasad, Advocate  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**ORAL JUDGMENT**  
**Date : 01-02-2019**

This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 26.09.2018 passed in Partition Suit No. 60 of 1985 by the learned Sub-Judge-1, Darbhanga whereby he has accepted the report dated 24.04.2014 submitted by survey knowing pleader commissioner.

2. Learned counsel for the petitioner submitted that without noticing the petitioner, the survey knowing pleader commissioner's report was accepted. He contended that the order impugned has been passed on the basis of surmises and conjectures. The petitioner had no knowledge of the scientific



measurement of the disputed land since he was absent from 17.04.2018 to 26.09.2018 and the impugned order has been passed without considering the case of the petitioner.

3. Having heard learned counsel for the petitioner and perused the record, I find that the petitioner is the defendant and judgment debtor in Partition Suit No. 60 of 1985. In the said suit, the judgment was passed on 06.02.2009 and decree was prepared on 17.02.2009. The petitioner contested the suit in the court below. The appointment of pleader commissioner was directed by the court in presence of the petitioner and he was directed to make local inspection and submit a report after measurement of the suit land. The pleader commissioner submitted his report on 24.04.2014. Against the report, the petitioner did not file any objection. He also failed to appear before the court repeatedly on 17.04.2018, 08.05.2018, 08.06.2018, 18.07.2018 and 13.08.2018.

4. It would be relevant to note that the plaintiff decree holder had made a prayer for confirming the report submitted by the pleader commissioner pursuant to which the court below had directed the petitioner to come prepared for hearing and on subsequent dates when he failed to appear, vide order dated 13.08.2018, the court below fixed 31.08.2018 for



hearing on the report of the pleader commissioner as a last date. Since the petitioner failed to appear even on 31.08.2018, the court below again adjourned the case to 06.09.2018 granting one more chance to him to participate in the hearing. When on 06.09.2018 also, the petitioner failed to appear, the court granted another chance to the petitioner and adjourned the case to 10.09.2018 for hearing on the report submitted by the pleader commissioner. Again, the petitioner failed to appear, but the court granted him another adjournment fixing 15.09.2018 as the next date for hearing on the report. On 15.09.2018, once again, the petitioner failed to appear before the court below. Under such circumstances, the court recorded that it appears that the petitioner-judgment debtor has lost interest in the case and fixed 26.09.2018 for passing the order. As the petitioner did not turn up even on 26.09.2018, the report submitted by the pleader commissioner was accepted and confirmed.

5. Regard being had to the continuous absence of the petitioner in the proceeding of the court, the contention of the petitioner that he was not duly noticed before accepting the pleader commissioner's report cannot be accepted. The petitioner repeatedly absented himself from the proceeding of the court and



the court was left with no option but to accept the pleader commissioner’s report.

6. In that view of the matter, I find no merit in this case. Accordingly, the application is dismissed.

**(Ashwani Kumar Singh, J)**

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| Uploading Date    | 05.02.2019 |
| Transmission Date |            |

