

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.337 of 2019

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Zafar Imam @ Md. Zaffar Imam @ Jafar Imam S/o Late Samsul Hoda, R/o
Village- Pakahi, P.S.- Makhdumpur, Distt.- Jehanabad.

... .. Plaintiff -Petitioner

Versus

1. Sarwar Imam S/o Late Md. Ali Imam
2. Taiyab Imam S/o Late Md. Ali Imam

Both are R/o Village- Pakahi, P.O.- Tehta, P.S.- Makhdumpur, Distt.-
Jehanabad.

3. Talat Parveen W/o Saukat Imam D/o Late Md. Ali Imam, R/o- Mohalla-
Sultanganj, C/o Dr. Zakir Hussain High School, Patna Town, P.S.
Sultanganj, Distt.- Patna.

... .. Defendants/ Respondents

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Appearance :

For the Appellant/s : Mr.Umesh Kumar, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 20-06-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the
Constitution of India has been filed by the petitioner challenging
the order dated 19.01.2019 passed by the learned Sub Judge-1,
Jehanabad in Partition Suit No. 99 of 2014 whereby the report
of Takhtabandi dated 17.07.2018 submitted by the survey
knowing Pleader Commissioner has been rejected.



3. Learned counsel for the petitioner submitted that the court below did not appreciate that the report of Takhtabandi submitted by the survey knowing Pleader Commissioner is legal, valid, just and proper. He contended that no one had raised any objection at the time of inspection and the allotment of the land in favour of both the parties nor in this regard any objection was filed before the court below before or after submission of the report of Takhtaband before the survey knowing Pleader Commissioner. However, when the petitioner filed a petition for confirming the report of the survey knowing Pleader Commissioner on 18.07.2018, the respondents have filed objection on 21.07.2018 just in order to delay the matter.

4. On perusal of the report, I find that in the court below the survey knowing Pleader Commissioner was examined on 30.08.2018 and was cross-examined by the respondents on 07.09.2018. He has admitted in cross-examination that the defendant Sarwar Imam had not given in writing that he be given share in all the plots in southern side.

5. Having appreciated the evidence of the Pleader Commissioner, since the parties were not agreeable to the Takhtabandi made by the Pleader Commissioner, the court below vide impugned order dated 19.01.2019 rejected his



report.

6. In this regard it would be relevant to note that sub-rule (3) of Rule 10 to Order 26 of the Civil Procedure Code provides that where the court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit. The law is well settled that Advocate Commissioner should not be appointed to gather evidence to prove the case of the parties. The parties have to prove the case by letting legally acceptable evidence and the report of the Commissioner can only aid the court in evaluating the evidence to come to a just conclusion.

7. On the basis of sub-rule (3) of Rule 10 to Order 26, objections to the Commissioner's report are considered and the court has to pass order as to whether it is satisfied with the proceeding of the Commissioner or not.

8. Merely because the objections raised by the respondents has been sustained and the report of Pleader Commissioner has been rejected, the order impugned cannot be held to be bad or perverse. The parties would be at liberty to lead their evidence in the suit.

9. In that view of the matter, I am not inclined to interfere with the order impugned in supervisory jurisdiction



under Article 227 of the Constitution of India. The application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	

