

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.482 of 2019

Gorakh Nath Pathak S/o Late Kamta Prasad Pathak, R/o Mohalla- New Colony, Pakri, Ara in front of Circuit House, P.O. and P.S.- Ara Nawada, District- Bhojpur. At present- residing opposite House No. B/64, Sai Lane, Budha Colony, Patna, P.S.- Budha Colony, District- Patna.

... .. Defendant/Petitioner

Versus

1. Rakesh Kumar Singh S/o Late Uma Prasad Mehta, R/o- Mohalla- Pakri, Ara, P.O. and P.S.- Ara Nawada, District- Bhojpur.
2. Ramawati Devi D/o Late Uma Prasad Mehta, W/o- Shivdani Singh R/o Village- Barka Rajpur, P.S.- Simri, District- Buxar.
3. Prabhawati Kunwar D/o Late Uma Prasad Mehta, W/o- Late Ramadhar Singh, R/o Village- Fahepur, P.S.- Sandesh, District- Bhojpur.
..... Plaintiffs/Respondents
4. Ashok Prasad S/o Late Shankar Prasad ,R/o- Mohalla- Pakri, Ward No. 12, P.S.- Ara Nawada, District- Bhojpur.
5. Devenwar Prasad S/o Late Shankar Prasad R/o- Mohalla- Pakri, Ward No. 12, P.S.- Ara Nawada, District- Bhojpur.

... .. Defendants/Respondents

Appearance :

For the Petitioner : Mr. Bibhakar Tiwary, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 01-08-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 24.09.2018 passed by the learned Execution Munsif, Ara in Title Suit No.12 of 1992 whereby the petition dated 07.06.2018 filed by the petitioner for measurement of entire land has been rejected and the report of the survey knowing Pleader Commissioner has been taken into evidence.



2. Learned counsel for the petitioner submitted that the plaintiffs objected the appointment of Pleader Commissioner till the person of their choice was not appointed. The core issue in the present dispute is alleged encroachment over the land of the plaintiffs by the petitioner. This dispute cannot be resolved till the entire land of the petitioner as also of the plaintiffs is measured. The plaintiffs are bent upon not to get their land measured. The survey knowing Pleader Commissioner also ignored the specific direction issued by the trial court vide order dated 09.11.2011 to measure the land first then to demarcate them. He submitted that the survey knowing Pleader Commissioner without measuring the land has submitted his report showing encroachment on the part of the petitioner. Having regard to the objection raised by the petitioner, the court below ought to have allowed the application, but, surprisingly, vide order dated 13.02.2019, the application filed by the petitioner on 22.11.2018 has been rejected.

3. Having heard learned counsel for the petitioner and carefully perused the record, I find that the plaintiffs/respondents had filed Title Suit No.12 of 1992 claiming therein that their land appertaining to Plot No.700 had



been encroached by the petitioner. The trial court in order to ascertain the facts directed the survey knowing Pleader Commissioner vide order dated 09.11.2011 to measure the entire land of both the parties and then to demarcate the lands so as to come to a definite conclusion. The Pleader Commissioner submitted his report showing encroachment on the part of the petitioner over the land of the plaintiffs. The survey knowing Pleader Commissioner reported that the petitioner had made encroachment over 700 square Kari land. The petitioner filed his objection dated 31.10.2013 against the report submitted by the survey knowing Pleader Commissioner. He filed another application dated 11.04.2014 before the trial court mentioning therein that the plaintiffs claimed area of their land to be 10 Katha which is equal to 31 decimals, but had not produced any document in support of their claim. He also stated that the survey knowing Pleader Commissioner had not measured the land in accordance with the direction dated 09.11.2011. However, the trial court rejected the aforesaid petition filed by the petitioner, vide order dated 12.05.2014. Thereafter, the petitioner filed another petition dated 07.06.2018 before the trial court praying therein to measure the entire land of the plaintiffs as well as of the petitioner. The plaintiffs filed their objection



dated 23.06.2018 to the petition dated 07.06.2018 filed by the petitioner. Vide order dated 24.09.2018 the trial court not only dismissed the petition dated 07.06.2018 filed by the petitioner, but also confirmed the report of the survey knowing Pleader Commissioner. There upon, the petitioner filed another petition dated 22.11.2018 before the trial court praying therein to pass appropriate order for re-hearing on the report of the survey knowing Pleader Commissioner. The plaintiffs filed their rejoinder dated 14.12.2018 to the said petition. The trial court dismissed the said petition dated 22.11.2018 filed by the petitioner, vide order dated 13.02.2019.

4. Apparently, the petitioner is filing repeated applications before the court challenging the report of the survey knowing Pleader Commissioner. The court below, having considered the totality of the circumstances, clearly held that the survey knowing Pleader Commissioner had submitted his report on all the points referred to him by the court. The trial court has also recorded that no technical defect could be pointed out in the report of the survey knowing Pleader Commissioner.

5. The order impugned passed by the trial court is neither without jurisdiction nor the same suffers from any illegality or irregularity. In that view of the matter, I see no



reason to interfere with the same under the supervisory jurisdiction of this Court

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

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.08.2019
Transmission Date	

