

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.391 of 2019

Mithilesh Kumar Singh son of Late Shivdhar Singh resident of Village and P.O.- Bhatauna, P.S. Karja, District- Muzaffarpur, presently residing at Krishna Vihar Road No. 1 House No. 9 Yadav Nagar Bhagwanpur, P.S.- Muzaffarpur Sadar, District- Muzaffarpur.

... .. Petitioner

Versus

1. Rama Devi wife of Ajay Kumar Singh resident of Village and P.O.- Bhatauna, P.S.- Karja, District- Muzaffarpur.
2. Ranjan Kumar Sharma resident of Village and P.O.- Sabalpur (Babbantoli), P.S.- Sonapur, District- Saran, at present residing at Mohalla- Gobarsahi, P.S.- Sadar, P.O.- Bhagwanpur, District- Muzaffarpur.
3. Rinki Devi wife of Ranjan Kumar Sharma resident of Village and P.O.- Sabalpur (Babbantoli), P.S.- Sonapur, District- Saran, at present residing at Mohalla- Gobarsahi, P.S.- Sadar, P.O.- Bhagwanpur, District- Muzaffarpur.

... .. Respondents

Appearance :

For the Petitioner : Mr.Chandra Mohan Jha, Advocate
For the Respondent : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 05-07-2019

Heard learned counsel for the petitioner.

2. A copy of the plaint of Title Suit No. 287 of 2018 has been submitted by the learned counsel for the petitioner.

Let the same be kept on record.

3. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 17.11.2018 passed in Title Suit No.287 of 2018 by the learned Sub-Judge-1st (West), Muzaffarpur whereby



he has rejected the application of the petitioner for appointment of an advocate commissioner.

4. Learned counsel appearing for the petitioner submitted that the court below while passing the impugned order has failed to appreciate the facts and law involved in the case. It ought to have appointed an advocate commissioner for physical verification of the suit property for deciding the suit properly and efficaciously.

5. Having heard learned counsel for the petitioner and perused the materials on record, I find that the petitioner had filed Title Suit No. 287 of 2018 in the court of Sub-Judge-1st (West), Muzaffarpur for the following reliefs:-

“A. That on adjudication of the facts stated above the court after declaring the plaintiff’s right, title, interest and possession over the suit land and house detailed in schedule-1 land of the plaint be pleased to pass decree for recovery of possession in favour of the plaintiff against the defendants with mense profit.

B. That the amount of mense profit be ascertained in subsequent proceeding by appointment of survey knowing Advocate Commissioner and the amount so assessed be realised from the defendants and the same be paid to the plaintiff.



C. That the court be pleased to hold and declare that the sale deed dated 05.04.2011 is forged, fabricated, illegal, void, inoperative and without consideration and never acted upon and the defendant second party never acquired any right, title, interest and possession over schedule-1 land of the plaintiff on the basis of sale deed dated 05.04.2011.

D. That the court be pleased to hold and declare that the defendant second party had no right to execute sale deed dated 28.07.2011 with respect to the schedule-1 land or house of the plaintiff in favour of defendant first party and the defendant first party never acquired any right, title, interest and possession over the suit land on the basis of sale deed dated 28.07.2011.

E. That a time be given to the defendant first party to give vacant possession of schedule-1 land and house of the plaintiff to the plaintiff and if the defendant first party fails to give vacant possession to the plaintiff over the suit land and house within the time given by the court then in that case the court be pleased to give vacant possession over schedule-1 land with house of the plaintiff to the plaintiff through the process of the court at the cost of the plaintiff to be realized from the defendants.



F. That the cost of the suit with interest be awarded to the plaintiff against the defendants.

G. That any other relief or reliefs to which the plaintiff be found entitled be given to him.”

6. The plaintiff-petitioner filed an application under Order 26 Rule 9 of the Code of Civil Procedure on 12.07.2018 for appointment of pleader commissioner for the purpose of physical verification of the suit land.

7. The defendants filed an objection to the application filed on behalf of the petitioner on 28.08.2018. They contended that the plaintiff is fully aware that he has got no right, title, interest or possession over the suit land. By the proposed petition for appointment of advocate commissioner, the plaintiff wants to collect evidence through the agency of the court and a court cannot work like a party to the suit. They further contended that the plaintiff has admittedly sold the disputed land in the year 2011 and the purchaser again sold the same to defendant no. 1 and he is in possession of the suit land.

8. Having appreciated the pleadings of the parties, the court below vide impugned order dated 17.11.2018 rejected the application of the petitioner holding therein that the



sale deed was executed on 05.04.2011 and 28.07.2011 and the suit has been filed in 2018. The properties detailed in the sale deeds are admittedly not in possession of the petitioner. It further held that prima facie, the presumption is in favour of the registered sale deed and the presumption regarding the bona fide of the registered sale deed can be rebutted by the party, who challenges the genuineness of the registered sale deed only by way of leading evidence. It has further observed that from the pleading of the petitioner, it would be evident that the plaintiff came to know about the alleged fraud in the execution of the sale deeds in the year 2014 but still the suit was not filed promptly and it was filed after four years in 2018.

9. Having regard to the facts and circumstances of the case, the trial court was of the opinion that there is no prima facie case in favour of the petitioner and no case for appointment of an advocate commissioner for physical verification of the suit land is made out.

10. It is well settled position in law that it is not the object of the Order 26 Rule 9 to assist a party to collect evidence where party can get evidence itself. A pleader commissioner can not be appointed for local inspection or physical verification at the will of the party. The power has been vested on



the court to appoint a commissioner for local inspection in order that court may better appreciate the evidence already on record. Here, instead of leading evidence, the petitioner intends that evidence be collected through the process of the court.

11. Under the circumstances, the court below has rightly rejected the application of the petitioner. Accordingly, this application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.07.2019
Transmission Date	NA

