

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.552 of 2019**

=====

Ram Kumar Chaudhary, aged about 63 years, male, Son of late Ramji Chaudhary, Resident of Village and Post-Mahmadi Pur, P.S-Mohiuddin Nagar, Distt-Samastipur

... .. Plaintiff/ Petitioner

Versus

Rajiv Kumar Jaisawal, Son of late Raghunath Chaudhary, Resident of Village and Post-Mahmadipur, P.S-Mohiuddin Nagar, Dist-Samastipur.

... .. Defendant/ Respondent

=====

Appearance :

For the Plaintiff : Mr. Dhananjai Kumar Singh-Advocate
For the Respondent : Mr.

=====

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

13-09-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 18.01.2019 passed by the learned Subordinate Judge, Sahpur Patori in connection with Title Partition Suit No.43 of 2017, by which he has rejected the petition dated 14.06.2017 filed by the plaintiff-petitioner under Order-39, Rule-1 and 2 read with Sections 94 and 151 of the Code of Civil Procedure for grant of injunction in respect of the disputed land in his favour.

3. Learned counsel appearing for the petitioner submitted that the order impugned passed by the Court below is erroneous both on law and on facts. He submitted that during pendency of the injunction petition the petitioner was instructed



to file a petition under Order-XXVI, Rule-9 of the Code of Civil Procedure (for short 'C.P.C.') for appointment of Pleader Commissioner, so that the facts asserted by the petitioner and denied by the Respondent be ascertained and verified. In pursuance of the said instruction, he filed an application under Order-26, Rule-9 of the Code of Civil Procedure on 12.06.2018, which was allowed and a Pleader Commissioner was appointed by the Court below, who conducted local inquiry in presence of the parties, a field note was prepared and, on 14.07.2018, a report was submitted before the Court below, which would clearly show that the land situated between the house of the petitioner and the house of his brother is being used by the respondent for running a coaching centre. He submitted that the Court below has completely ignored the report of the Pleader Commissioner and came to an erroneous finding that none of the ingredients essential for passing an order under Order-39, Rule-1 and 2 read with Section 94 and 151 of the Code of Civil Procedure was present in the case.

4. Having heard learned counsel for the petitioner and perused the materials on record, I find that a petition under Order-39, Rule-1 and 2 read with Section 94 and 151 of the Code of Civil Procedure was filed by the plaintiff-petitioner in



the suit for preferential right regarding an area of 18 Dhur 12 Kanwa land detailed in Schedule-1 of the plaint. The petitioner claimed that the suit property had been separately transferred by the defendant second set in favour of defendant first set in violation of Section 22 of the Hindu Succession Act and Section 4 of the Partition Act. The petitioner further claimed that no partition by metes and bounds had taken place between the parties and till date, they were jointly sharing the property. His contention was that on 09.10.2017, defendant first set came over the suit property and demolished a part of khaprail house.

5. The defendant first set contested the matter. He contended that about 50 years ago, a partition had already been done in between plaintiff and defendant second set and since then, they are living separately unconcerned and unconnected with each other. He further contended that he is a bonafide purchaser of the suit property from the defendant second set on 26.06.2017 and also obtained the possession of the same. Since then, after removing the debris, he is using and utilizing the suit land by giving temporary shed on it.

6. On the basis of the aforesaid pleading of the parties and after going through local inspection report of the Pleader Commissioner about the existence of two temporary



rooms, firewood, electric meter on suit plot belonging to the defendant, which indicated that the defendant is in possession and construction of the rooms had taken place between one and two years, the Court below came to the conclusion that neither prima facie case nor balance of convenience lies in favour of the plaintiffs. It also came to the conclusion that no irreparable loss is likely to be caused to the plaintiffs.

7. Having arrived at such a conclusion, the trial Court below rejected the application filed by the petitioner under Order-39, Rule-1 and 2 read with Section 94 and 151 of the Code of Civil Procedure. The order impugned clearly goes to suggest that the report of the Pleader Commissioner was looked into by the Court below and after taking into consideration, the materials available on the record, the Court recorded its finding.

8. The contention of the petitioner that the local inspection report was not taken into consideration while passing the order impugned, is totally misconceived. Having considered the entire materials on record, I am of the opinion that the order impugned passed by the Court below is neither without jurisdiction nor perverse.

9. In that view of the matter, I am not inclined to



interfere with the same in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.

10. The application is dismissed.

(Ashwani Kumar Singh, J)

vikash/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.09.2019
Transmission Date	24.09.2019

