

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1057 of 2019

1. Ram Pukar Ray, Son of late Jimdar Ray, Resident of Village-Kumahara Bisanpur Tole Hariharpur, P.O.-Kumahara Bisanpur, P.S.-Dumra, District-Sitamarhi.
2. Subedar Ray, Son of late Ram Sunder Ray, Resident of Village- Kumahara Bisanpur Tole Hariharpur, P.O.-Kumahara Bisanpur, P.S.-Dumra, District-Sitamarhi.
3. Malwar Ray, Son of late Samujn Lal Rai, Resident of Village- Kumahara Bisanpur Tole Hariharpur, P.O.-Kumahara Bisanpur, P.S.-Dumra, District-Sitamarhi.
4. Ram Vishwas Rai, Son of late Samujn Lal Rai, Resident of Village-Kumahara Bisanpur Tole Hariharpur, P.O.-Kumahara Bisanpur, P.S.-Dumra, District- Sitamarhi.

... .. (Defendant II Party)-Petitioners
Versus

1. Brahamdeo Mahto, Son of late Ram Bahadur Mahto, Resident of Village-Kumahra Bisanpur Tole Hariharpur, P.O. Kumahara Bisanpur, P.S. and Anchal-Dumra, District- Sitamarhi.

... .. (Plaintiff)-Opposite Party-Ist Party

2. The State of Bihar through the Collector, Sitamarhi.

... .. Opposite Party -IInd Party

Appearance :

For the Petitioners	:	Mr. Najmul Hoda, Advocate
For the Respondents	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 25-07-2019

Defect, as pointed out by the Stamp Reporter, is ignored.

2. Heard learned counsel for the petitioners.

3. This application under Article 227 of the Constitution of India has been filed by the petitioners challenging the order dated 03.05.2019 passed by the learned Munsif, Sadar, Sitamarhi in Title Suit No.112 of 2001/CIS No. 289 of 2014 whereby he has



rejected the leave application dated 15.01.2019 filed by the petitioners to submit the comparative map and report of the pleader commissioner.

4. Learned counsel appearing for the petitioners submitted that the report prepared by the pleader commissioner is necessary for proper adjudication of the case in question. Instead of critically examining the document intended to be filed by the petitioners in the suit, the learned Munsif mechanically rejected the leave application filed by the petitioners.

5. He submitted that Order 8 Rule 1-A(3) of the Code of Civil Procedure (for short 'CPC') stipulates that a document which ought to be produced in the court by the defendant but is not so produced shall not without the leave of the court be received in the evidence on his behalf at the hearing of the suit. Since a *bona fide* prayer was made by the petitioners, the learned Munsif ought to have allowed the application and taken the comparative map prepared and report of the pleader commissioner in evidence.

6. The facts of the case in brief are that the plaintiff Brahmdeo Mahto had filed Title Suit No.112 of 2001 impleading the petitioners and the State of Bihar through the Collector, Sitamarhi for declaration of title, confirmation of possession over



schedule-I land and for permanent injunction on the facts mentioned in the plaint.

7. The defendants filed their written statements and are contesting the suit.

8. After the suit was taken up for hearing, the plaintiff adduced his evidence. Thereafter, the defendant no.1, the State of Bihar, adduced its evidence and after the petitioners started their deposition examined nine witnesses in the case.

9. After examination of nine witnesses, an application was filed by the petitioners praying therein that the report of pleader commissioner, Md. Kamrul Hoda, containing comparative map of cadastral survey and revisional survey was inadvertently kept in a separate bundle of papers and was not filed. Hence, a prayer was made vide application dated 15.01.2019 seeking leave to file the report of the pleader commissioner.

10. The plaintiff filed his rejoinder on 24.01.2019. His objection was that in the application filed by the petitioners, they had pleaded that the report of pleader commissioner, Md. Kamrul Hoda, containing comparative map of cadastral survey and revisional survey was prepared prior to the filing of the written statement, but inadvertently, the same could not be filed earlier. However, the fact of the matter is that the report of Md. Kamrul



Hoda containing comparative map of cadastral survey and revisional survey is dated 03.02.2006, which was about three years after the written statement was filed. The plaintiff further stated that in terms of Order 8 Rule 1-A, the petitioners were required to produce documents at the time of filing of the written statement. Since they did not file documents in time, the learned Munsif rightly rejected their leave application.

11. Apparently, a belated application was filed for adducing certain documentary evidence after the examination of the witnesses on behalf of the plaintiff and the defendant State of Bihar. By the time, the application was filed, altogether nine witnesses on behalf of the petitioners were already examined. At this belated stage, if the trial court would have allowed the application of the petitioners, the witness examined on behalf of the plaintiffs would have to be recalled, as new evidence would have been introduced. Otherwise, the witnesses already examined on behalf of the plaintiff would have no opportunity to rebut the veracity of the report and comparative map prepared by Mr. Kamrul Hoda. That apart, the petitioners had also not approached the court with clean hand. They had taken a plea that the report of the pleader commissioner, Md. Kamrul Hoda, was prepared prior to the filing of the written statement. The written statement was



filed on their behalf on 02.05.2003 and the report of the pleader commissioner was dated 03.02.2006 that means after about three years of filing of the written statement, the report was prepared.

12. Considering all these aspects, if the trial court has rejected the leave application filed by the petitioners vide impugned order, I see no reason to interfere with the same in exercise of supervisory jurisdiction.

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

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.08.2019
Transmission Date	NA

