

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.2096 of 2017

1. Surendra Prasad Singh
2. Narendra Singh
3. Birendra Singh Sl 1 to 3 Sons of late Akadash Singh
4. Guleshwari Devi Widow of late Akadash Singh All Residents of Village- Kalimullahpur Chitaura, P.S. Sheikhpura now Mehush, District- Sheikhpura.
5. Girija Devi Daughter of late Akadash Singh, Wife of late Mohan Singh Resident of Village- Chuharchak, P.S. Barhia, District- Lakhisarai,.
6. Pabitry Devi Daughter of late Akadash Singh, Wife of Rambabu Singh Resident of Village- Bhetganwa, P.S. Barh, District- Patna.
... .. Defendants 1st set/Petitioners 1st set
7. Bhushan Singh
8. Nandan Singh Both Sons of late Nibas Singh
9. Mithilesh Devi Wife of late Nibash Sharma All Residents of Village- Kalimullahpur Chitaura, P.S. Sheikhpura now Mehush, District- Sheikhpura.
10. Sima Kumar Daughter of Late Nibash Sharma , Wife of Nibash Singh Resident of Village- Devaspura, P.S. Katarisarai, District Nalanda.
11. Lalo Kumari@ Lalita devi Daughter of late Nibash Sharma, Wife of Niraj Singh Resident of Village Parsama, P.S. Ramgarh chouk, District Lakhisarai.

... .. Defendants 3rd set/Petitioners 2nd set
Versus

1. Rajo Singh and Ors Son of late Mudrika Singh Residents of Village- Kalimullahpur Chitaura, P.S. Sheikhpura now Mehush, District- Sheikhpura.
... .. Plaintiff/Respondent 1st set
2. Rudradeo Singh Son of late Shivnandan Singh
3. Kishory Singh @ Shyam Kishory Singh Son of Tribeni Singh Both Residents of Village- Kalimullahpur Chitaura, P.S. Sheikhpura now Mehush, District Sheikhpura.
... .. Defendants 2nd set/Respondents 2nd set
4. Arun Kumar Singh
5. Udai Kumar Singh Both Sons of Bachu Singh
6. Sihanta Devi Wife of Bachu Singh
7. Shyam Sundar Singh Son of Triveni Singh All Residents of Village- Kalimullahpur Chitaura, P.S. Sheikhpura now Mehush, District- Sheikhpura.

... .. Defendants 4th set/Respondents 3rd set

Appearance :

For the Petitioners	:	Mr. Vikas Sharma, Adv. Mr. Jitendra Kumar, Adv.
For the Respondent/s	:	Mr. Sia Ram Shahi, Adv.



CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 18-07-2019

Heard Mr. Vikas Sharma, learned counsel for the defendants-petitioners and Mr. Sia Ram Shahi, learned counsel for the plaintiff-respondent 1st set.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners for quashing the order dated 31.10.2017 passed by the learned Additional Munsif, Sheikhpura in Title Suit No. 27 of 2015 whereby the prayer made by the plaintiff respondent 1st set for appointment of survey knowing pleader commissioner for local inspection and measurement has been allowed.

3. Mr. Vikas Sharma, learned counsel appearing for the petitioners submitted that the learned Additional Munsif has allowed the prayer for appointment of survey knowing pleader commissioner without assigning any reason much less a cogent reason for making such appointment and, that too, without formulating the points of inspection and report vide order dated 31.10.2017. He submitted that the learned Additional Munsif also failed to take notice of the well established principles of law that the object behind the appointment of pleader commissioner under Order 26, Rule 9 of the Code of Civil Procedure (for short 'CPC')



is not to assist any party to collect evidence specially when such party himself is able to collect such evidence.

4. Per contra, Mr. Siya Ram Shahi, learned counsel appearing for the plaintiff respondent 1st set submitted that the order impugned passed by the court below is not in order to collect or create evidence for the answering plaintiff respondent, but the same has been passed taking into consideration the fact that in order to decide the real controversy between the parties, a report of survey knowing pleader commissioner is required.

5. I have heard learned counsel for the parties and carefully perused the materials on record.

6. The plaintiff-respondent 1st set has filed Title Suit No. 27 of 2015 for declaration of the title of the plaintiff on the suit land detailed in Schedule 4A and 4B of the plaint including the suit land of Schedule-V of the plaint against the defendant 1st party and any other party, who claimed the said land in the court. He also prayed to confirm the possession of the plaintiff on the suit land detailed in Schedule-V of the plaint and in case of being dispossessed from the suit land during pendency of the suit, to pass a decree of restoration of possession of the suit land in his favour.



7. The entire controversy in the suit revolves around a piece of land measuring 0.9 decimals of plot no.399 appertaining to khata no. 19 of Mauza Kalimullahpur.

8. On summons, the petitioners appeared and contested the suit by filing written statements of their defence.

9. On 16.07.2016, the plaintiff, without formulating the points for determination, filed a petition under Order 26 Rule 9 as well as Section 151 of the CPC for appointment of a pleader commissioner for local inspection and measurement on the ground that the defendants used to interfere in the peaceful possession over the land purchased by him by draining out water and taking out *rasta* for which panchayati was held but the defendants 1st set declined to accept the same and without making any measurement got their house constructed as a result of which measurement of the land described in schedule 4 of the plaint by a survey knowing pleader commissioner has become necessary.

10. The defendants 1st and 3rd set by filing separate rejoinders opposed the prayer/pleading inter alia that the petition is not maintainable and the plaintiff has failed to make out a case for appointment of survey knowing pleader commissioner.

11. After hearing the parties, the learned Additional Munsif rejected the objections raised on behalf of the defendants-



petitioners and allowed the prayer for appointment of a pleader commissioner vide impugned order dated 31.10.2017.

12. Having perused the order impugned, I find that while passing the impugned order the learned Munsif has not assigned any reason for appointment of survey knowing pleader commissioner.

13. The plaintiff did not formulate the points for determination by a pleader commissioner in his application filed under Order 26, Rule 9 read with Section 151 of the CPC.

14. It has rightly been submitted by the learned counsel appearing for the defendants-petitioners that the court below has failed to take notice of the well established principle of law that the object behind appointment of pleader commissioner under Order 26, Rule 9 of the CPC is not to assist any party to collect evidence specially when such party himself is able to collect such evidence. The court has also not fixed the terms of reference on which the pleader commissioner was required to report.

15. An appointment of a pleader commissioner for local inspection is the discretion of the court. It is at liberty to exercise the power under Order 26, Rule 9 of the CPC at any stage of the suit for elucidating any matter in dispute, but the court is required to see whether or not the purpose for which such appointment is



being sought is relevant to the relief claimed in the suit. Before appointing a commissioner for local inspection, the court must direct the parties to set out their case. The appointment of pleader commissioner cannot be made mechanically on mere asking of the parties. The discretionary power must be exercised by the court judiciously.

16. Having regard to the facts and circumstances of the case, I find that not only no reason has been assigned by the court for appointing survey knowing pleader commissioner, but the order passed by it is also cryptic and has been passed at the very initial stage of the suit.

17. For the reasons stated above, the order impugned cannot be sustained. It is quashed, accordingly.

18. The application stands allowed.

19. The interlocutory applications stand disposed of.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.07.2019
Transmission Date	

