

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1605 of 2019**

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1. Savitri Devi @ Sharda Devi W/o Late Hari Shankar Sah Resident of Village- Hardiya Tola, Manjuraha, P.s.- Turkauliya, Distt.- East Champaran
 2. Vidyanand Sah S/o Late Hari Shankar Sah Resident of Village- Hardiya Tola, Manjuraha, P.s.- Turkauliya, Distt.- East Champaran
 3. Jawahar @ Jawahar Kumar Sah @ Jawahar Kumar Sah S/o Late Hari Shankar Sah Resident of Village- Hardiya Tola, Manjuraha, P.s.- Turkauliya, Distt.- East Champaran
 4. Kaushalya Devi @ Kokila Devi D/o Late Hari Shankar Sah Resident of Village- Hardiya Tola, Manjuraha, P.s.- Turkauliya, Distt.- East Champaran
 5. Baburam Sah S/o Late Shital Sharan Gupta Resident of Village- Hardiya Tola, Manjuraha, P.s.- Turkauliya, Distt.- East Champaran

... .. Plaintiffs/Petitioners

Versus

1. Banarasi Sah S/o Late Shankar Sah Resident of Village- Nandpur, Parsauna, P.S.- Sangrampur, Distt.- East Champaran, Presently, R/o Village- Hardiya Tola, Manjuraha, P.S.- Turkauliya, Distt.- East Champaran
2. Smt. Leelawati Devi W/o Banarasi Sah Resident of Village- Nandpur, Parsauna, P.S.- Sangrampur, Distt.- East Champaran, Presently, R/o Village- Hardiya Tola, Manjuraha, P.S.- Turkauliya, Distt.- East Champaran

... .. Defendants/ Respondents

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Appearance :

For the Petitioner/s : Mr. Dhurendra Kumar, Advocate.

For the Respondent/s: Mr.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 07-01-2020

The present petition has been filed “*for setting aside the part of order dated 05.09.2019 passed by the learned Munsif, Sadar, Motihari, East Champaran, in Title Suit No. 149 of 2001 whereby the*



petition dated 02.09.2019 filed by the plaintiffs/petitioners for issuance of writ to the survey knowing pleader commissioner in view of order dated 22.07.2008, has been rejected."

2. Learned counsel for the plaintiffs/petitioners submits that the present suit has been filed for declaration of title and recovery of possession over the suit land from which they have been dispossessed by the defendants/respondents who have encroached upon the said land. It is submitted that the original plaintiff no. 1, namely, Hari Shankar Sah during his lifetime filed a petition for appointment of survey knowing pleader commissioner which was allowed but further steps could not be taken before his death. Accordingly, the legal heirs of the original plaintiff no. 1 were substituted as petitioner nos. 1 to 4. Upon coming to know about the previous order of appointment of survey knowing pleader commissioner, the fee in this regard was deposited on 12.04.2013, consequent upon which the learned District Judge appointed Sri Bipin Bihari Tiwary as survey knowing pleader commissioner. It is the case of the petitioners that writ along with requisites for being handed over to the survey knowing pleader commissioner was filed on 05.07.2014 but the same was kept on record and never came to be issued. It is submitted that the learned court below ought not to have rejected the petitioners' application for issuance of writ to the survey knowing pleader commissioner for demarcation of land



inasmuch as a report in that behalf was necessary for proper adjudication of the suit.

3. Having heard learned counsel for the petitioners and on consideration of the materials on record, this Court is not inclined to interfere in the matter. A perusal of the impugned order dated 05.09.2019 discloses the facts in their proper perspective. It has been stated that the petitioners claim to have filed the writ and requisites on 05.07.2014 but there was nothing on record to substantiate such claim nor any ordersheet was found written in that regard. No doubt, some documents had been filed on 05.07.2014 as enumerated. It is also observed that writ and requisites are available on record but the same neither bear the stamp of court nor any date of filing is mentioned over the documents. The learned court below has further expressed the view that even though the application of the plaintiff for appointment of survey knowing pleader commissioner was allowed in the year 2008, no steps were taken till 2013. It has therefore been found that the plaintiff had not shown any eagerness for appointment of survey knowing pleader commissioner nor desired to proceed for measurement of the suit land.

4. It is well settled that this Court does not sit in appeal over the impugned order while exercising jurisdiction under Article 227 of the Constitution of India, the scope whereof is primarily only to ensure that the learned Court below acts within the bounds of its



authority. No jurisdictional error in the impugned order has been pointed out by learned counsel for the petitioners. The petition accordingly stands dismissed.

(Vikash Jain, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10.01.2020
Transmission Date	N.A.

