

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.592 of 2018**

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Lakshmna Nand Saraswati Alias Lakshman Prasad Son of late Baid Nath Prasad Resident of Village Benipur, P.S. Bahera, District-Darbhanga.

... .. Petitioner/s

Versus

1. Ratan Prasad Shrivastava, Son of late Krishna Prasad
2. Chitra Gupta Prasad Son of late Sheoji Prasad
3. Dhurub Prasad Son of late Kanta Prasad
4. Bimal Kumar Son of late Benimadhav
1-4 are resident of Village Lakshmi Sagar Ward No. Old 9, P.S. Lalit Narain Mithila University District- Dharbhanga.
5. Smt. Rama Devi Wife of late Baid Nath Prasad
6. Bharat Kumar
7. Shankar Kumar
8. Rewah Raman Shrivastava Sons of late Baid Nath Prasad
5-8 are resident of Village P.O. Benipur, P.S. Bahera, District- Dharbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Nand Kishore Prasad Sinha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 27-07-2022 Heard learned Counsel for the petitioner.

The petitioner is aggrieved by the order, dated 13.03.2018, passed by learned Sub Judge, Benipur, Darbhanga, in Title Suit No. 146 of 2011, whereby the learned Court below has allowed the application filed by the plaintiffs-respondent 1st Set, under Order XXVI Rule 9 read with Section 151 of the C.P.C. and appointed the Advocate Commissioner.

Learned Counsel for the petitioner submits that the suit is of the year 2011 and the same has been filed by the



plaintiffs-respondent 1st Set for setting aside the compromise decree, which was passed with the consent of the parties in the year 2005. He further submits that instead of filing miscellaneous application for setting aside the compromise decree, the present title suit has been filed in the year 2011 and the plaintiffs-respondents 1st Set in order to delay the disposal of the suit has filed the application for appointment of the Advocate Commissioner, which has been allowed by the learned Court below by the impugned order.

I have heard learned Counsel for the petitioner and have gone through the materials available on record including the impugned order. It appears that the learned Court below has appointed the Advocate Commissioner, under Order XXVI Rule 9 read with Section 151 of the C.P.C., for ascertaining the physical position of the properties involved in the suit for the purpose of elucidating the matter in dispute.

This Court, in the case of **Tribhuwan Kumar Rai @ Tribhuwan Rai v. Ram Dhyan Rai and Others**, reported in **2013 (4) PLJR 763**, has held that such power, unless exercised arbitrarily, cannot be interfered with in a proceeding under Article 227 of the Constitution of India.

In view of the aforesaid, I come to the conclusion that



there is no infirmity in the impugned order.

This application is, accordingly, dismissed.

At this stage, learned Counsel for the petitioner submits that the suit was filed about 11 years back and the same is still pending, accordingly, a direction be given to the learned Court below to decide the suit on its own merit one way or the other within a limited time frame.

Taking into consideration the fact that the suit is pending for about 11 years, the learned Court below is requested to dispose the suit expeditiously without granting unnecessary adjournment to either parties.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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