

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1695 of 2018

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Satyadeo Tiwary S/o late Manu Tiwary Resident of Village- Chandwa, P.S.-
Ara Nawada, Distt. Bhojpur.

... .. Petitioner/s

Versus

1. Parash Nath Singh S/o Sri Rosan Singh, Chairman, Sarshwati Shishu Vidya Mandir Keshavpuram, Maharaja Hata Ara Town P.S. Ara Nawada, Distt. Bhojpur.
2. Birendra Kumar Rai S/o late Rajeshwar Rai Secretary, Sarswati Shishu Vidya Mandir Keshvapuram, Maharaja Hata, P.S. Ara Nawada, Distt. Bhojpur.
3. Ram Naresh Singh S/o late Saraju Singh Present Principal of Sarswati Shishu Vidya Mandir Kesavpuram, Maharaja Hata, P.S. Ara Nawada, Distt. Bhojpur.
4. Baliendra Prasad S/o Banwari Prasad Resident of Vill- Kanwali Distt. Gaya, at Present resident of Muhalla- Club Road Ara Town, P.S. Ara Town, Distt. Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajani Ranjan Pd. Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 02-12-2022 The petitioner is the defendant in a suit, bearing Title

Suit No. 349 of 2005, filed by the plaintiffs-respondent nos. 1 to
3, for declaration of title and possession over the Schedule-1
land of the plaint with further prayer to remove the
encroachment done by the petitioner-defendant from the land to
the extent as shown by way of site map, attached with the plaint.

Issues have already been framed in the suit and after
framing of the issues, the plaintiffs-respondents filed a petition,
under Order XVI Rule 10 (a) of the Code of Civil Procedure, for



appointment of survey-knowing pleader commissioner, *inter alia*, on the ground that at the time of filing of the suit, the details of encroachment was given tentatively and further during the pendency of the suit also, the defendant has encroached further upon the suit land. As such, in order to ascertain the actual physical status of the suit land and the encroachment made over there, it is necessary to appoint a survey-knowing pleader commissioner in order to arrive at the just decision in the suit.

The request of the plaintiffs-respondents has been accepted by the learned Trial Court on the ground that in a suit for removal of encroachment, appointment of survey-knowing pleader commissioner is legally valid.

Learned Counsel for the petitioner submits that the impugned order suffers from various illegalities inasmuch as the learned Trial Court, without taking into consideration the fact that the Pleader Commissioner would measure which portion of the suit land and how much area would be demarcated as encroached land, has directed for appointment of Pleader Commissioner. It has further been submitted that the suit has been filed for declaration of title and recovery of possession, as such, the petition filed by the plaintiffs-respondents for



appointment of Pleader Commissioner is not maintainable, particularly, when the respondents-plaintiffs have not given specific portion of the encroached land, including the side from which the measurement would be done.

I have heard learned Counsel for the petitioner and have gone through the materials available on record, including the impugned order.

From perusal of Annexure-1, which is a copy of the plaint, it appears that the suit has been filed for a declaration that the plaintiffs have the title over the suit land and the defendants are trespassers. Accordingly the relief has been sought by the plaintiffs for removal of the encroachment and for recovery of possession. The sight map showing the encroached portion over the suit land has also been made part of the plaint.

The plaintiffs have come out with the case that at the time of filing the suit, only the tentative area of encroachment has been brought and during the pendency of the suit, further encroachment has been made by the defendant, as such, the actual area of encroachment, if any, can only be ascertained by the scientific measurement of the disputed land.

In a suit for removal of encroachment, it is just and proper that a survey-knowing pleader commissioner be



appointed to conduct a survey in order to ascertain the correct extent and boundaries of the property in dispute. In such a situation, appointment of Commissioner should not be mistaken for collecting evidence. (See, **Anil Kamalakar Shirodkar v. Dudhappa Santu Patit and Another**, reported in **2001 SCC ONLINE KAR 127**).

In view of the aforesaid discussion, in my opinion, in order to effectively and properly adjudicate the dispute raised by the plaintiffs regarding the encroachment done by the defendants upon the suit land, the scientific measurement of the disputed land is required to be done by the pleader commissioner. This will help in ascertaining the extent of encroachment or otherwise upon the suit land.

In the result, the impugned order does not require any interference by this Court.

This application is, accordingly, dismissed.

(Anil Kumar Sinha, J.)

AFR/
Prabhakar Anand/-

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