

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.268 of 2018

Vijay Kumar Singh Alias Vijay Kumar Son of Late Baleshwar Singh,
Resident of Hariji Chaubey Lane Old Ward No. 2, Now Ward No. 16, Post
Office and Police Station- Dumraon, District Buxar.

... .. Petitioner/s

Versus

Anil Kumar Singh Son of Late Baleshwar Singh, resident of Hariji, Chaubey
Lane, Old Ward No. 2, New Ward No. 16, Post Office and Police Station-
Dumraon, District- Buxar, at present Assistant Public Prosecutor, Civil Courts
Dhanbad, District- Dhanbad, Jharkhand.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Najmul Hoda, Advocate.
For the Respondent/s : Mrs. Rina Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 14-09-2022

Heard Mr. Najmul Hoda, learned counsel for the
petitioner and Mrs. Rina Sinha, learned counsel for the respondent.

2. The petitioner/defendant is aggrieved by the
impugned order dated 7.10.2017 passed by the learned Sub Judge-
II, Dumraon in Title Suit No. 307 of 2012, by which, the prayer for
appointment of Survey Knowing Advocate Commissioner has
been rejected by the Trial Court.

3. Learned counsel for the petitioner submits that a
piece of land having total area of 2 *Katthas* 12 *Dhoors* more
particularly described in Schedule-I of the plaint, annexed at
Annexure-I, was purchased by way of a registered sale deed dated
27.03.1992 in the name of defendant/petitioner and his brother



Dwarika Singh. The said Dwarika Singh subsequently by a registered sale deed Nos. 5774 and 2773 dated 1.4.1997 transferred the half portion of the Schedule-I land in favour of the plaintiff/respondent. The details of land transferred by the said Dwarika Singh in favour of the plaintiff has been described in Schedule-II of the plaint.

4. Learned counsel further submits that in so far as the title of the plaintiff is concerned, the petitioner/defendant is not denying the title of the plaintiff and the only dispute which arises between the parties is, bifurcation of their purchased land. He next submits that earlier the petitioner had preferred an application for appointment of Survey Knowing Advocate Commissioner to enable the parties to identify and to bifurcate their respective purchased land, but due to non-deposit of fee, the Survey Knowing Advocate Commissioner was not appointed and his prayer was rejected vide order dated 3.11.2016 and a revision preferred against that order was also dismissed by this Court on the ground that since the petitioner/defendant has not started his evidence and for deciding the question of title of the plaintiff, the appointment of Advocate Commissioner is not at all required. Learned counsel also submits that since the petitioner is not disputing the title of the plaintiff and his earlier challenge to the order dated 3.11.2016



before this Court was rejected on the ground that the defendant has not yet started his evidence, but, now, the situation has changed, the defendant's witnesses have been examined and only dispute which is involved in this matter is for bifurcation of the land purchased by the plaintiff/respondent from the co-owner Dwarika Singh. He also submits that admittedly it would be evident from the plaint also that the partition between Dwarika Singh and the petitioner/defendant had already taken place and the plaintiff/respondent is purchaser from the share of his another brother, Dwarika Singh. Accordingly, submission is that for the effective disposal of the suit, the Survey Knowing Advocate Commissioner is required to be appointed in the interest of the justice.

5. On the other hand, learned counsel for the plaintiff/respondent submits that the prayer for appointment of Advocate Commissioner was rejected by the Trial Court which was affirmed by the High Court, and now, again the petition has been filed by the petitioner/defendant for appointment of Survey Knowing Advocate Commissioner with an intention to delay in disposal of the suit.

6. I have heard learned counsel for the parties.



7. It appears that petitioner/defendant is not disputing the title of the plaintiff/respondent. The earlier Civil Miscellaneous No. 4 of 2017 filed by the petitioner was rejected on the ground that the defendant's evidence was not started, but now in the changed situation, four defendant's witnesses have already been examined. It transpires from the material available on the record that two brothers i.e. petitioner/defendant as well as another brother Dwarika Singh have jointly purchased the suit land at Schedule-I property by way of a registered sale deed, and subsequently, there was a partition between them and after partition the said Dwarika Singh transferred half portion of his share by way of registered sale deed in the year 1997 in favour of plaintiff/respondent.

8. In the totality of the fact, it transpires that only dispute between the parties is for bifurcation of land purchased by them. Order XXVI Rule 10-A of the Civil Procedure Code stipulates as follows:-

“10-A. Commission for scientific investigation – (1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a



commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a commissioner appointed under rule 9”.

9. From perusal of the relevant provision, it appears that the commission for scientific investigation can be considered by the Court in the interest of justice and in order to arrive at just conclusion.

10. In view of the necessary facts involved in this case, I find expedient in the interest of justice and for effective disposal of the present suit, the Survey Knowing Advocate Commissioner is required to be appointed.

11. Accordingly, the impugned order dated 7.10.2017 passed by the learned Sub-Judge-II, Dumraon, in Title Suit No. 307 of 2012, is set aside.

12. The Trial Court is directed to appoint Survey Knowing Advocate Commissioner within a period of two weeks from the date of receipt/production of a copy of this order.

13. Learned counsel for the respondent/defendant submits that since now the suit is fixed for argument, the Trial



Court may be directed to dispose the suit expeditiously after receipt of the report of the Survey Knowing Advocate Commissioner within reasonable time frame.

14. Accordingly, the learned Trial Court is directed to dispose the suit on its own merit in accordance with law within a period of three months from the date of receipt/production of report of Survey Knowing Advocate Commissioner.

15. This application is, accordingly, disposed of.

(Anil Kumar Sinha, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	25.09.2022
Transmission Date	N.A.

