

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1172 of 2018

Arjun Thakur, Son of Surju Thakur, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.

... .. Petitioner/s

Versus

2. Sharda Kuer, Daughter of Late Ramdhyan Hazam, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
3. Saraswati Kuer, Daughter of Late Ramdhyan Hazam, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
5. Devanti Devi, Daughter of Harivansh Prasad, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
6. Kanti Devi, Daughter of Harivansh Prasad, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
8. Harinarayan Ram, Son of Ramdhyan Hazam, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
9. Pushpa Kuer, Wife of Awadhesh Narayan Prasad, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
10. Surya Prakash Thakur, Son of Awadhesh Narayan Prasad, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
11. Suraj Prakash Thakur, Son of Awadhesh Narayan Prasad, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
12. Niraj Kumari, Daughter of Awadhesh Narayan Prasad, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
13. Nidhi Kumari, Daughter of Awadhesh Narayan Prasad, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
14. Sidhi Kumari, Daughter of Awadhesh Narayan Prasad, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
15. Jitendra Narayan Prasad, Son of Harivansh Prasad, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
16. Narendra Narayan Prasad, Son of Harivansh Prasad, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
17. Satyendra Narayan Prasad, Son of Harivansh Prasad, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
18. Ravindra Nath Thakur. Son of Harivansh Prasad, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
19. Ashutosh Prasad, Son of Rajvansh Thakur, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
20. Shambhu Thakur, Son of Harinarayan Thakur, Resident of Mauza- Jehanabad, Police Station- Kudra, District- Kaimur at Bhabua.
21. Vimla Kuer, Wife of Late Krishna Thakur, Resident of Village- Jehanabad, Post office and Police Station- Kudra, District- Kaimur.



22. Munna Thakur, Son of Sudarshan Thakur, Resident of Village- Jehanabad, Post office and Police Station- Kudra, District- Kaimur.
23. Kokhan Thakur, Son of Sudarshan Thakur, Resident of Village- Jehanabad, Post office and Police Station- Kudra, District- Kaimur.
24. Ravi Thakur, Son of Arjun Thakur, Resident of Village- Jehanabad, Post office and Police Station- Kudra, District- Kaimur.
25. Shashi Thakur, Son of Arjun Thakur, Resident of Village- Jehanabad, Post Office and Police Station- Kudra, District- Kaimur.
26. Manish Thakur, Son of Arjun Thakur, Resident of Village- Jehanabad, Post Office and Police Station- Kudra, District- Kaimur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Parth Gaurav, Advocate
For the Respondent/s : Mr. Arabind Nath Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 19-04-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 17.05.2018 passed by learned Munsif, Kaimur, Bhabua in Title Suit No. 29 of 1996 whereby application filed by the petitioner (defendant no. 5) dated 05.01.2018 under Order XXVI Rule 10-A has been rejected.

3. The plaintiff/ respondents 1st set has filed the suit for declaration of his title over the suit land and for recovery of possession along with permanent injunction. The case of the plaintiff in short is that the disputed property is the ancestral land of the plaintiff and market is situated over the said land. Two sets of written statement-cum-counter claim was filed, first



on behalf of defendants no. 1 to 4 and second on behalf of defendant no. 5. Survey knowing Advocate Commissioner was appointed on the application filed by the plaintiff who submitted his report on 12.01.1998. Objection petition was filed on behalf of defendants. Defendant no. 5 who is petitioner herein filed an application under Order 26 Rule 10-A CPC to make measurement of the land and to report on five points stated in application to be answered by the Commissioner which has been rejected by the learned Trial Court vide the impugned order dated 17.05.2018.

4. Learned senior counsel for the petitioner has submitted that earlier Commissioner had made an inspection behind the back of the petitioner without serving proper notice on him and without making measurement scientifically, submitted his report. It is submitted that said report is liable to be set aside being unsatisfactory and unscientific. The rejoinder to the said application was filed by the plaintiff contending *inter alia* that unless the report of previous Commissioner is set aside, a fresh Commissioner cannot be appointed.

5. Learned senior counsel for petitioner has further submitted that the previous Commissioner had also exceeded his jurisdiction in its report to the effect that defendants have done



encroachment in plot no. 1804 and 1806 and made construction thereon. He has referred a Judgment of Delhi High Court in case of **Brij Lal Vs. Ram Pratap (AIR 1982 Delhi 149)** wherein it was observed that “it is well settled that Local Commissioner can be deputed to do a particular job, for instance inspection of spot or carrying out measurements and a court cannot delegate its own powers to decide any dispute between the parties. In the present case job of the Local Commissioner was to carry out measurement on the spot and prepare plan on the basis of the said measurements. He did not have jurisdiction to take into consideration what had been held by the Appellate Court previously. Further, he actually decided the whole dispute between the parties by way of holding that land in dispute belonged to the plaintiff and defendant had encroached upon the same. On that account entire report of the Local Commissioner was not worthy of acceptance.”

6. Learned senior counsel for the petitioner lastly submitted that since the report of earlier Survey Knowing Advocate Commissioner is not valid in Law, accordingly, there is no bar to appoint a fresh Survey Knowing Advocate Commissioner for filing fresh report in the facts and circumstances of the case.



7. Learned counsel for the respondents has submitted that in the present case admittedly a Survey Knowing Advocate Commissioner was previously appointed who submitted his report which is part of record and the same has not been set aside. Accordingly, application for appointing Second Survey Knowing Advocate Commissioner is not maintainable and the learned court below has passed the order considering the facts and law on this point and there is no ground for interference by this court in its supervisory jurisdiction.

8. Learned counsel for the respondents has placed reliance upon the judgment of this Court reported in **Saudagar Mahto Vs. Ram Charitra Mahto & Ors. (2015 (2) PLJR 52)** wherein it was held that second hand writing expert could not be appointed without setting aside earlier report. The judgment of full bench of this Court reported in **1992 (1) PLJR 380 (Asifunisa Vs. Ali Imam)** was referred and relied upon.

9. Having heard the learned counsel for the parties and on perusal of material on record, it appears that admittedly the report of Survey Knowing Advocate Commissioner is on record and the objection raised by the learned senior counsel for petitioner against the said report cannot be consider in this proceeding. As discussed above, the application for appointment



of Second Commissioner without setting aside the report of First Commissioner, is not maintainable.

10. The learned court below by the reasoned order dismissed the petitioner to appoint a Second Survey Knowing Advocate Commissioner considering that the report of previous Commissioner is still part of record and in view of the settled verdicts of Hon’ble Court the petition for appointment of Second Commissioner is not maintainable and accordingly dismissed the said petition of the petitioner. There is no valid reason or ground made out to interfere in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, with the impugned order passed by the learned court below.

11. This Civil Miscellaneous Application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	NAFR
CAV DATE	14.02.2023
Uploading Date	19.04.2023
Transmission Date	

