

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1588 of 2018**

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Harishankar Prasad, Son of Late Laxmi Sah, Resident of Village- Ramgarhwa Bazar (Gola Road), P.O. and P.S.- Ramgarhwa, District- East Champaran.

... .. Petitioner/s

Versus

1. Vishwani Sharan, Son of Late Bishun Sharan, Resident of Village- Ramgarhwa Bazar (Gola Road), P.O. and P.S.- Ramgarhwa, District- East Champaran.
2. Vinod Kumar, Son of Vishwani Sharan, Resident of Village- Ramgarhwa Bazar (Gola Road), P.O. and P.S.- Ramgarhwa, District- East Champaran.
3. Pramod Kumar, Son of Vishwani Sharan, Resident of Village- Ramgarhwa Bazar (Gola Road), P.O. and P.S.- Ramgarhwa, District- East Champaran.
4. Manoj Kumar, Son of Vishwani Sharan, Resident of Village- Ramgarhwa Bazar (Gola Road), P.O. and P.S.- Ramgarhwa, District- East Champaran.
5. Ashok Kumar, Son of Vishwani Sharan, Resident of Village- Ramgarhwa Bazar (Gola Road), P.O. and P.S.- Ramgarhwa, District- East Champaran.
6. Raju Kumar, Son of Vishwani Sharan, Resident of Village- Ramgarhwa Bazar (Gola Road), P.O. and P.S.- Ramgarhwa, District- East Champaran.
7. Rakesh Kumar, Son of Vishwani Sharan, Resident of Village- Ramgarhwa Bazar (Gola Road), P.O. and P.S.- Ramgarhwa, District- East Champaran.
8. Rajendra Prasad, Son of Not known Resident of Ramgarhwa Bazar (Gola Road), P.O. and P.S. - Ramgarhwa, District- East Champaran.
9. Amar Prasad, Son of Not known Resident of Ramgarhwa Bazar (Gola Road), P.O. and P.S. - Ramgarhwa, District- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dilip Kumar Tondon, Advocate
For the Respondent/s	:	Mr. Ram Adya Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

6 16-03-2023 Heard learned counsel for the parties.

The instant Civil Miscellaneous application has been filed for setting aside the order dated 01.09.2018 passed by learned Sub-Judge-IX, Motihari, East Champaran in Title Suit No. 425 / 09 whereby and whereunder he has rejected the



petitioner's petition dated 06.08.2018 for appointment of a Survey Knowing Pleader Commissioner.

The petitioner is defendant No. 1 in the Title Suit No. 425 / 09. The suit has been filed by the original plaintiff for declaration of title over 2 dhur land of Khata No. 17, Khesra No. 1385 / 25 (suit land) which was purchased from one Laxmi Sah (father of defendants). A petition dated 06.08.2018 filed on behalf of defendants No. 1 to 3 for appointment of a Survey Knowing Pleader Commissioner on the point whether the house of plaintiff is situated on plot No. 1385 / 26 or on 1385 / 25. Earlier also a petition was filed for appointment of a Survey Knowing Pleader Commissioner which was rejected by the learned trial Court. The learned trial Court observed that it is not the case of defendants that house of the plaintiff is situated on Plot No. 1385 / 26 and, therefore, there is no need for a report of Survey Knowing Pleader Commissioner regarding Plot Number on the house of plaintiff is situated. The said application on behalf of defendants has been filed when the trial Court allowed the petition for recalling the closure of defendant's evidence for adducing further evidence within three dates.

Learned counsel for the petitioner submits that appointment of a Survey Knowing Commissioner to ascertain



the house of plaintiff is situated on plot No. 1385 / 26 or on plot No. 1385 / 25 is essential for the ends of justice and the same was not filed to delay the disposal of the suit or to collect the evidence but for the just decision in this case.

On the other hand, learned counsel for the respondents submits that there is no illegality in the impugned order refusing the appointment of Survey Knowing Pleader Commissioner and the learned trial Court passed the reasoned order considering the facts and circumstances of the case.

Having heard the learned counsel for the petitioner and on perusal of record and the impugned order, it appears that the suit land is 2 dhur land of Khata No. 17 Khesra No. 1385 / 25 and learned trial Court rightly stated that it is settled law that parties have to prove their own case by adducing evidence and the Survey Knowing Commissioner cannot be appointed for the purpose of collection of the evidence. Earlier similar petition for appointment of Survey Knowing Pleader Commissioner was rejected and filing the similar petition again at belated stage has rightly been rejected by the learned Court below and there is no merit in the application.

In the fact and circumstances as stated above, I do not find any jurisdictional illegality or error or infirmity in the



impugned order passed by the trial Court. The petitioner has not made out the case for any interference by this Court under Article 227 of the Constitution of India.

Accordingly, this Civil Miscellaneous application is dismissed.

(Sunil Dutta Mishra, J)

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