

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.207 of 2023

Mahanth Ramkishore Das Chela and Waris of Late Mahanth Nand Kishore Das, Resident of Village- Birrakh, P.S.- Sursand, District- Sitamarhi.

... .. Petitioner/s

Versus

1. Bihar State Board of Religious Trust Vidyapati Marg, Patna through Sri Akhilesh Kumar Jain, President, Bihar State Religious Trust Board, Vidyapati Marg, Patna.
2. President, Bihar State Religious Trust Board, Vidyapati Marg, Patna.
3. The Collector, Sitamarhi-cum- Trustee, Birrakh Math.
4. The Anchala Adhikari, Sursand.
5. Sri Luxami Narain Ji, installed and established in the temple of Village- Birrakh, P.S.- Sursand, District- Sitamarhi, Through its Shebait Mahanth Ram Kishore Das Chela and Waris of Late Mahanth Nand Kishore Das, Resident of Village- Birrakh, P.S.- Sursand, District- Sitamarhi.
6. Sri Ram Janaki Ji, installed and established in the temple of Village- Birrakh, P.S.- Sursand, District- Sitamarhi, Through its Shebait Mahanth Ram Kishore Das Chela and Waris of Late Mahanth Nand Kishore Das, Resident of Village- Birrakh, P.S.- Sursand, District- Sitamarhi.
7. Sri Luxman Ji, installed and established in the temple of Village- Birrakh, P.S.- Sursand, District- Sitamarhi, Through its Shebait Mahanth Ram Kishore Das Chela and Waris of Late Mahanth Nand Kishore Das, Resident of Village- Birrakh, P.S.- Sursand, District- Sitamarhi.
8. Sri Bharat Ji, installed and established in the temple of Village- Birrakh, P.S.- Sursand, District- Sitamarhi, Through its Shebait Mahanth Ram Kishore Das Chela and Waris of Late Mahanth Nand Kishore Das, Resident of Village- Birrakh, P.S.- Sursand, District- Sitamarhi.
9. Sri Hanuman Ji, installed and established in the temple of Village- Birrakh, P.S.- Sursand, District- Sitamarhi, Through its Shebait Mahanth Ram Kishore Das Chela and Waris of Late Mahanth Nand Kishore Das, Resident of Village- Birrakh, P.S.- Sursand, District- Sitamarhi.
10. Sri Radha Krishna Ji, installed and established in the temple of Village- Birrakh, P.S.- Sursand, District- Sitamarhi, Through its Shebait Mahanth Ram Kishore Das Chela and Waris of Late Mahanth Nand Kishore Das, Resident of Village- Birrakh, P.S.- Sursand, District- Sitamarhi.
11. Sri Balram Ji, installed and established in the temple of Village- Birrakh, P.S.- Sursand, District- Sitamarhi, Through its Shebait Mahanth Ram Kishore Das Chela and Waris of Late Mahanth Nand Kishore Das, Resident of Village- Birrakh, P.S.- Sursand, District- Sitamarhi.
12. Sri Ram Janki Ji, installed and established in the temple of Village- Rasalpur, P.S.- Bajpatti, District- Sitamarhi, Through its Shebait Mahanth Ram Kishore Das Chela and Waris of Late Mahanth Nand Kishore Das, Resident of Village- Birrakh, P.S.- Sursand, District- Sitamarhi.
13. Sri Lakshuman Ji, installed and established in the temple of Village-



Rasalpur, P.S.- Bajpatti, District- Sitamarhi, Through its Shebait Mahanth Ram Kishore Das Chela and Waris of Late Mahanth Nand Kishore Das, Resident of Village- Birrakh, P.S.- Sursand, District- Sitamarhi.

14. Sri Bharat Ji, installed and established in the temple of Village- Rasalpur, P.S.- Bajpatti, District- Sitamarhi, Through its Shebait Mahanth Ram Kishore Das Chela and Waris of Late Mahanth Nand Kishore Das, Resident of Village- Birrakh, P.S.- Sursand, District- Sitamarhi.
15. Sri Shatrughan Ji, installed and established in the temple of Village- Rasalpur, P.S.- Bajpatti, District- Sitamarhi, Through its Shebait Mahanth Ram Kishore Das Chela and Waris of Late Mahanth Nand Kishore Das, Resident of Village- Birrakh, P.S.- Sursand, District- Sitamarhi.
16. Sri Shesh Bagwan Ji, installed and established in the temple of Village- Rasalpur, P.S.- Bajpatti, District- Sitamarhi, Through its Shebait Mahanth Ram Kishore Das Chela and Waris of Late Mahanth Nand Kishore Das, Resident of Village- Birrakh, P.S.- Sursand, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Jha, Advocate
For the State	:	Mr. Navnit Kumar, AC to GP 18
For the Trust	:	Mr. Ganpati Trivedi, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

2 24-03-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous application has been filed under Article 227 of the Constitution of India for setting aside the order dated 11.01.2023 passed by learned Subordinate Judge -I, Pupari, Sitamarhi in Title Suit No. 11/96 whereby and whereunder the learned Court below has rejected the application of the petitioner filed for appointment of Advocate Commissioner for inspection of suit property.

3. The petitioner is one of the plaintiffs who filed Title Suit No. 11 of 1996 for declaration that the trust of the family deties with respect to the suit land are private trust and



not the properties of public religious trust and also for permanent injunction restraining defendants from interfering with possession of the plaintiffs or management with respect to land in dispute and other allied reliefs.

4. According to the petitioner original Mahanth Sita Ram Das acquired properties in Birrakh and Rasalpur and established idols as his private deties. In old survey those land acquired by him was recorded in the name of his chela Mahant Ram Din Das. The idols and deties were installed in the residential house within one campus. It is completely a private and family deties having no any access to the public therein. The defendants-respondents vide letter dated 12.06.1995 directed the plaintiff-petitioner to file return claiming the property to be a public trust. The defendant no. 2 removed the petitioner from trusteeship from the Birrakh Math and placed the Collector as temporary trustee who vide order dated 01.06.1998 ordered the Anchal Adhikari, Sursand to take charge of Birakhh Math.

5. In the light of aforesaid facts the plaintiff-petitioner filed the aforesaid Title Suit in which the defendant Nos. 1 and 2 filed the written statement. The suit proceeded, issues were framed, evidence were taken, arguments were concluded and the



case was fixed for filing written argument.

6. The plaintiff-petitioner filed a petition after completion of argument for appointing a local Commissioner to inspect the spot and for getting report on four points which the court below has rejected vide order dated 11.01.2023 on the ground that suit is 26 years old and application has been filed after argument of the parties has been concluded and the case is fixed for filing written argument and it is not in the interest of justice to appoint the Advocate Commissioner. Hence this Civil Miscellaneous Application has been filed by the plaintiff-petitioner challenging the aforesaid order.

7. Learned counsel for the petitioner submits that the learned trial court without considering the point for which the appointment of commissioner was sought for rejected the petitioner in mechanical way. He has next submitted that it is immaterial that suit is old and also the stage of suit , if the issues are helpful in adjudicating the matter in dispute and the report of the local commissioner can clarify the facts of the case. No prejudice will be caused to the defendants by appointing the advocate commissioner to visit the suit property and note down the physical features. The advocate commissioner's report would enable the court for the purpose of throwing more light or



enlighten to arrive at a fair decision. Thus, the order of learned Court below is liable to be set aside.

8. Learned Senior counsel for the respondents submits that the law is well settled that after conclusion of the argument and when the case is fixed for Order / Judgement then it is not proper to appoint Commissioner for local inspection. He has referred and relied on the judgment of the Hon'ble Supreme Court reported in A.I.R. 1964 SC 993 wherein it was observed that when once the hearing starts, the code contemplates only two stages in the trial of the suit: (1) Where the hearing is adjourned or (2) Where the hearing is complete. Where the hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order XX Rule 1 permits, Judgment to be delivered after an interval after the hearing is complete.

9. Learned senior counsel for the respondents further submits that the petitioner is to prove his case through evidence and the Court cannot assist the party to collect evidence for his case and the petition was filed with an intention to delay the proceedings. Further he submits that the said application was frivolous, misconceived and mala fide and the learned Court below was well justified in rejecting such an application.



10. It is settled law that if the Court deems a local investigation is necessary for the purpose of elucidating any matter in dispute, the Court may issue commission, at any stage of the suit. There is no prescription of stage to file a petition for appointment of Advocate Commissioner provided under Civil Procedure Code.

11. A party is required to prove his case on the basis of evidence adduced by him and it cannot take help of the evidence collected by the Advocate Commissioner. The object of local inspection is not to collect evidence which can be taken in Court but to obtain evidence which form its very peculiar nature can only be had on the spot.

12. From perusal of Order 26 Rule 9 of the Code of Civil Procedure, it would appear that:-

(i) Primarily it is the discretion of the trial court to issue a commission for local investigation.

(ii) Such commission can be appointed at any stage for the purpose of ascertaining the facts enumerated in the provision for elucidating any matter in dispute.

(iii) It does not provide the stage when a commission can be issued.

13. The question of appointment of a commissioner



does not depend merely whether any prejudice will be caused to the other side or not. Instead, there must be a sufficient basis and justification and also an effective need for an appointment of an Advocate Commissioner.

14. The superintendence referred to in Article 227 of the Constitution includes judicial superintendence. The power conferred by this Article is wide but not unlimited. The exercise of the power conferred by Article 227 is discretionary. This case has no extraordinary features of its own which can attract the application of Article 227. There is no question of miscarriage of justice or gross dereliction of duty. It is not a case where it is necessary to keep the trial court within its bounds. He has the jurisdiction and discretion to deal with the application for appointment of commissioner and he had jurisdiction to arrive at a right as well as a wrong decision.

15. It is, therefore, not a case which calls for interference in the exercise of this Court's powers under Article 227 of the Constitution of India. The trial Court by the impugned order rejected the application filed by for appointment of Commissioner to inspect the suit property at the stage of filing written argument. There is no reason or ground made out to interfere with the impugned order passed by the



learned trial Court.

The Civil Miscellaneous Application is accordingly,
dismissed.

(Sunil Dutta Mishra, J)

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