

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1556 of 2018**

Abdul Rashid S/o Md. Hanif, Resident of Village- Sungaris, P.S.- Gurua,
P.O.- Punaul, Dist.- Gaya.

... .. Petitioner/s

Versus

1. Md. Firoz Sultan, Son of Late Sultan Zafar @ Gulam Mustafa.
 2. Md. Afroz Sultan, Son of Late Sultan Zafar @ Gulam Mustafa.
- Both 1 and 2 are residing of Mohalla- Shaheed Road, P.S.- Kotwali, District-
Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dharmendra Kumar Sinha, Advocate
For the Respondent/s : Mr. Abbas Haider, Advocate
Mr. Ranjay Kumar Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER**

4 30-01-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed against the order dated 09.04.2018 passed by Sub-Judge- IVth Gaya in T.S. No. 58 of 2015/ 95 of 2004 whereby and where under the Court below has confirmed the Commissioner's report.

3. Learned counsel for the petitioner submits that during the proceeding of the suit Survey Knowing Pleader Commissioner was appointed for scientific measurement of disputed land and also to find out encroachment who submitted



his report on 17.12.2014 and Defendant No. 1/petitioner had filed objection to report submitted by Survey Knowing Pleader Commissioner. Upon hearing of objection petition the learned Sub-Judge, Gaya vide his order dated 17.12.2016 directed to Survey Knowing Pleader Commissioner to give evidence in support of his report. It is submitted by the learned counsel for the petitioner that without adducing any evidence by Survey Knowing Pleader Commissioner in support of his report the learned Court below passed the impugned order and when defendant No. 1 petitioner filed recall of the order dated 09.04.2018 then by the order dated 18.08.2018, the Court below refused to recall the said order. He has prayed to set aside the impugned order and to give one opportunity to deposit the fees of Advocate Commissioner for evidence.

4. Learned counsel for the respondent submits that mere perusal of the order dated 18.08.2018, it appears that the Court had directed several times to the defendant No. 1 to deposit the cost of Survey Knowing Pleader Commissioner but the same had not been complied then finally Court confirmed the Survey Knowing Pleader Commissioner's report. However, he has conceded that these reasons have not been stated in the order dated 09.04.2018. He has further submitted that motive of



the petitioner is to delay the proceeding and heavy cost may be imposed upon the petitioner.

5. On perusal of order dated 09.04.2018, it is clear that the Court below confirmed the Commissioner's report without discussing the objection taken by the petitioner and without taking evidence of Survey Knowing Pleader Commissioner. The order dated 09.04.2018 is non-speaking order. It is in the interest of justice to take evidence of Survey Knowing Pleader Commissioner in view of the objection taken by the petitioner-defendant No. 1. It is expected that the defendant should be vigilant. Procedural law is the handmaid of the justice and not its mistress. Reason of passing order must be stated in the order and the same may be in brief. The process of justice may be speed up and hurried but fairness is a basic element of justice.

6. In view of the facts and circumstances of the case and considering the submission on behalf of the parties and in the interest of justice, the impugned orders dated 09.04.2018 and 18.08.2018 are set aside subject to cost of Rs. 10,000/- to be paid by the petitioner/defendant No. 1 to plaintiff within four weeks from the date of this order. The Court below shall grant one opportunity to the petitioner for deposit the cost for



evidence of Survey Knowing Pleader Commissioner within the time as may be provided by the learned Court below.

7. Accordingly, this Civil Miscellaneous Application is disposed of with the aforesaid direction.

(Sunil Dutta Mishra, J)

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