

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.343 of 2022

Mahendra Rai S/o Late Gonaur Rai, Resident of Village - Sahpur Maricha,
P.S. - Kudhani, P.O. - Baghi, District - Muzaffarpur.

... .. Petitioner

Versus

1. Ram Chandra Yadav, S/o Late Dhaneshwar Rai, Resident of Village - Sahdulapur Bhirgarha, P.O. - Chandanpatti, P.S. - Sakra, District - Muzaffarpur.
2. Mosmat Akli, D/o Late Dhaneshwar Rai, Resident of Village - Sahdulapur Bhirgarha, P.O. - Chandanpatti, P.S. - Sakra, District - Muzaffarpur.
3. Gangia, D/o Late Dhaneshwar Rai, Resident of Village - Sahdulapur Bhirgarha, P.O. - Chandanpatti, P.S. - Sakra, District - Muzaffarpur.
4. Smt. Laxami Devi, D/o Late Dhaneshwar Rai, Resident of Village - Sahdulapur Bhirgarha, P.O. - Chandanpatti, P.S. - Sakra, District - Muzaffarpur.
5. Smt. Shakuntala Devi W/o Sri Ram Lalit Rai, D/o Late Gonour Rai, Resident of Village and P.O. - Bhairokhra, P.S. - Pateypur, District - Vaishali. At present R/o Village and P.O. - Khaje Chand Chhapra, P.S. - Patepur, District - Vaishali.
6. Smt. Piyaria Devi, W/o Rama Rai, D/o Late Gonaur Rai, Resident of Village - Bhanpur Barewa, P.O. - Padmaul, P.S. - Goraul, District - Vaishali.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Manoj Kumar Manoj, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

3 16-08-2023 Heard learned counsel for the petitioner.

2. This application has been filed for setting aside the order dated 04.01.2020 passed in Partition Suit No. 87 of 1971-75 (FD) by Sub Judge – 16th, Muzaffarpur, whereby and whereunder petition dated 06.10.2018 filed by defendants including defendant No. 3 / petitioner has been rejected and Advocate Commissioner's report dated 28.08.2017 has been



confirmed.

3. The brief facts of the case are that the plaintiff-respondent filed Partition Suit No. 87 of 1971-75 in which preliminary decree was passed on 22.05.1976 in which share of both the parties in suit land was determined as $\frac{1}{2}$ share each. The defendants preferred appeal against the said judgment and decree which was dismissed. During the final decree proceeding, a writ was issued to a Survey Knowing Pleader Commissioner. The report of first Survey Knowing Pleader Commissioner was rejected by the learned Court below and was confirmed by this Court in CWJC No. 13998 / 12 with direction to the plaintiff / Decree-holder to take a fresh steps for a fresh Survey Knowing Pleader Commissioner report. Accordingly, new Survey Knowing Pleader Commissioner was appointed. The petitioner (defendant No. 3) filed an objection petition dated 20.06.2015 and the learned Court below given direction to issue writ to Survey Knowing Pleader Commissioner and to include objection petition with writ material.

4. The Survey Knowing Pleader Commissioner submitted his report. It appears from the perusal of report that notice was sent to the petitioner by speed post for filing relevant documents and the date was fixed for inspection and



measurement of disputed land and the same was done. Registered post was sent to plaintiff and defendant for filing Raibandi. The Survey Knowing Pleader Commissioner prepared Pattibandi and with respect to objection petition it is reported that no paper in support thereof has been filed by defendants.

5. The petitioner is claiming that defendant No. 3 is in possession over his purchased land and the same is also the matter of partition which has not been adjudicated between the parties. The case of the plaintiff is that the sale deed dated 03.10.1969 is illegal, null and void and was earlier than the date of filing of suit and the Court had not relied on the said deed.

6. Learned counsel for the petitioner submits that the court below while passing the impugned order dated 4.1.2017 has ignored the objection raised by the petitioner. The learned court below while passing the impugned order failed to appreciate that the said Advocate Commissioner never fixed the date for hearing on the objection petition, he has never visited the spot and has obtained the signature of some persons. The Mukhiya and Panchayat Samiti members who have signed on the order sheets are political rival of the petitioner. He further submits that the entire Advocate Commissioner report is the table report prepared without physically visit of spot and



accordingly Pattibandi is not maintainable in the eyes of law.

7. The learned Court below in the impugned order observed that as per the preliminary decree the suit land have been distributed giving $\frac{1}{2}$ share each to both parties. The Survey Knowing Commissioner had given notice to the parties, prepared map, Pattibandi, barabarda and report on different dates stated in the report. The suit is of year 1971 and preliminary decree in the suit was prepared on 22.05.1976. There is no reason to accept the objection dated 06.10.2018 and thereby accepted the report of Survey Knowing Pleader Commissioner and directed to take steps for preparation of final decree.

8. In the facts and circumstances of the case and on perusal of the impugned order, I do not find any jurisdictional error or illegality or infirmity to interfere with the same under Article 227 of the Constitution of India.

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

(Sunil Dutta Mishra, J)

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