

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1567 of 2018

1. Shailesh Kumar Singh Son of Late Sarwnath Singh,
2. Shashank Kumar Singh, Son of Late Sarwnath Singh,
3. Shri Sudhir Kumar Singh, Son of Late Dharmnath Singh, All Residents of Jaynagar, Police Station-Jay Nagar, District- Madhubani.

... .. Petitioner/s

Versus

1. Bihar Bhudan Yogya Committee, Through Chairman
2. Secretary, Zila Bhudan Yagya Committee, Madhubani.
3. Paltu Paswan, S/o Sital Paswan,
4. Biltu Paswan, Son of Ruplal Paswan,
5. Ram Prakash Paswan, Son of Binda Paswan.
6. Kaushalya Devi, Wife of Late Shivji Paswan,
7. Binod Paswan, Son of of Late Shivji Paswan, All residents of Jaynagar, Police Station- Jay Nagar, District- Madhubani.
8. Shatrughan Yadav,
9. Sushil Yadav,
10. Ajit Yadav,
11. Sunil Yadav,
12. Raj Kumar Yadav,
13. Vijay Yadav,
14. Anil Yadav, All Sons of Late Ganga Prasad Yadav.
15. Smt. Suphal Devi, Wife of Late Ganga Prasad Yadav, All Residents of Village- Gobarahi, Police Station- Jay Nagar, District- Madhubani.
16. Smt. Anju Singh, Wife of Late Shekar Kumar Singh.
17. Surya Shekhar Singh, Daughter of Late Shekhar Kumar Singh.
18. Sweta Singh, Daughter of Late Sunil Kumar.
19. Smt. Asha Singh, Wife of Sunil Kumar Singh.
20. Mostt. Fulwati Devi, Wife of Late Ram Nihora Singh, All residents of Jaynagar, Police Station- Jay Nagar, District- Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Manoj Kumar, Advocate
For the Respondent/s	:	None

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 04-09-2023 Heard learned counsel for the petitioners and the



State.

2. None appears for the respondents despite valid service of notice.

3. This application has been filed for quashing of order dated 19.07.2018 passed by learned Sub-Judge-II, Madhubani in Title Suit No. 87 of 1999 by which learned Magistrate has rejected the application of the petitioner for appointment of Advocate Commissioner.

4. Learned counsel for the petitioners has submitted that petitioners are the owners of land in question having area 5 Bigha 1 kattha 1 Dhur which was acquired by the joint family of the ancestors of the plaintiff and accordingly, the petitioners hold right, title on the said land.

5. He has further submitted that the respondent 1st set- Bihar Bhudan Yagnya Committee (here-in-after to be referred as Bhudan Committee) issued 2 Bigha of land out of the said land to the respondent 2nd set which was donated by his ancestor, namely, Late Baldeo Narian Singh to Bhudan Committee, which is absolutely incorrect, since his ancestor never donated any land to Bhudan Committee, as such the Danpatra, if any filed by the respondent 1st set- Bihar Bhudan Yogya Committee is a forged and fabricated document having no value in the eye of law. As



such neither the defendant 2nd set ever acquired any property, nor the respondent 1st set- Bihar Bhudan Yogya Committee acquired any property from his ancestor, namely, Late Baldeo Narian Singh. The ancestors of the petitioners filed a Title Suit No. 87 of 1999 in the Court of learned Sub-Judge, Madhubani against respondent 2nd set and respondent 1st set and sought the following reliefs has held as under :-

“(i) To declare the title of the plaintiffs and confirm their possession over the land in suit.

(ii) If the plaintiffs are dispossessed from the land in question during pendency of the suit, the decree for recovery of possession be passed in favour of the plaintiffs.

(iii) The decree for permanent injunction be passed against the defendants restraining them from interfering in possession of the plaintiffs and also restrained them with regard the land in suit.”

6. He has further submitted that despite service of notice to the respondents, only respondent no. 15 appeared and filed his written statement. In the said written statement it was contended that the ancestor of the petitioner Late Baldeo Narain Singh donated the property in question to Bhudan Yogya Committee against rest of the defendants' suit proceeded *ex-parte* and the said suit proceeded for hearing and the suit was decreed on contest against the respondent no. 14 & 15 and *ex-parte* against rest of defendants. Thereafter, the said suit having



been decreed, no appeal was preferred against that by the respondent 2nd set, but the respondent 1st set filed a Miscellaneous Case No. 01 of 2012 in the court below. Even though the said Decree was mainly against the respondent 2nd set and they did not challenge the same but the Court below without appreciating the same allowed the Miscellaneous Case No. 01 of 2012 and set aside the decree as a whole. Thereafter, the said suit having been restored to its original file, the respondent nos. 3 and 4 filed their written statement which has been objected by respondent no. 6 and 7 and against rest of the defendants- respondents the suit is still proceeding *ex parte*. The contesting defendants have come forward only with the same contention of donation of the land by the ancestor of petitioners in 1954 and thereby the settlement of the land by Bhudan Committee in their favour. While the suit was being contested with the said contention, the Bhudan Committee remained unsuccessful to substantiate their contention and the said suit was decreed against them and the contesting respondent's are contending their settlement and claiming their title and when the petitioners hold right title and interest on the said land, the physical feature and measurement of the land is vital importance, hence without the assistance of Survey Knowing Advocate



Commissioner evidence cannot be adduced by the petitioners and accordingly, the petitioners filed a petition in the court below for appointment of Survey Knowing Advocate Commissioner but learned court below rejected the application of the petitioners.

7. Learned Senior counsel for the petitioners has contended that impugned order is a cryptic order without considering contentions of the parties, by which the application has been rejected by the court below. He has further contended that the Survey Knowing Advocate Commissioner should be appointed to find out the correctness of the contention of the respondents and the plaintiffs in the interest of justice. He also relied upon a judgment of this Court in case of *Satdeo Tiwari Vs. Parasnath Singh (2023 01 PLJR 271)*.

8. Learned counsel for the respondents has submitted that the suit has been filed for declaring the right, title of the plaintiffs and confirming their possession over the suit land and if during the pendency of the suit land in the court below, the petitioners are dispossessed from the suit land and the decree of recovery of possession is passed in favour of the plaintiffs. The plaintiffs have also prayed for permanent injunction and in view of the aforesaid as the suit is for declaration of right, title and



interest and recovery of possession and hence, the appointment of Survey Knowing Advocate Commissioner is not at all required in the facts of the case as the suit land is vague and the impugned order is perfectly justified. He has relied upon the judgment of Hon'ble Supreme Court in case of ***Padam Sen and Others Vs. State of Uttar Pradesh*** reported in ***AIR 1961 SC 218***.

9. I have considered the submissions of the parties and also perused the materials available on record. The impugned order is a cryptic order in which case of neither of the parties has been considered and the same could have been set aside by this Court only on the aforesaid ground and remanded to the court below but because the said suit is of 1999 and the present civil miscellaneous petition is pending in this Court since 2018, I am of the view that I should decide the application for appointment of Survey Knowing Advocate without remitting the matter back to the court below.

10. Order 26 Rule 10 (A) of the C.P.C. reads as follows:-

"10A. Commission for scientific investigation:- (1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of



justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provision of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under Rule 9'

11. The present case is a case where physical features of the measurement of land is vital importance. The learned court below while passing the said order did not appreciate that in a suit of present nurture, appointment of Survey Knowing Advocate Commissioner is necessary to find out the correctness of the contention of the respondents and that the plaintiff/petitioners of their own without appointment of Survey Knowing Advocate Commissioner cannot bring the facts on record, which are essential for determination of the suit. Moreover, the parties are at dispute that there cannot be scientific measurement without direction of the Court. As such the appointment of Survey Knowing Advocate Commissioner is essential in the interest of justice.

12. In view of the Order 26 Rule 9, the prayer for appointment of Survey Knowing Advocate Commissioner is allowed. The impugned order dated 19.07.2018 passed by learned Sub-Judge-II, Madhubani in Title Suit No. 87 of 1999 is



hereby quashed.

13. The court below is directed to appoint a Survey Knowing Advocate Commissioner within fifteen days of receipt/communication of a copy of this order and thereafter, will issue a writ to the Survey Knowing Advocate Commissioner to submit a report within two months. The court below will decide the suit within six months from the date of submissions of the report by Survey Knowing Advocate Commissioner as the suit is pending since 1999.

14. The court below will proceed *ex parte* against non-cooperating party and will also file a compliance report after nine months or after disposal of the suit whichever is earlier.

15. With the aforesaid observation and direction, this application is disposed of.

(Sandeep Kumar, J)

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