

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1239 of 2018

1. Mohan Rai
2. Sanjay Rai, Both Sons of Sabhapati Rai, Residents of Village- Sirsa Bali, P.O.- Sarai Bux, P.S.- Bheldi, District- Saran.

... .. Petitioner/s

Versus

1. Rajendra Prasad Yadav
2. Om Prakash Rai
3. Ram Narayan Rai, All Sons of Ram Bhaju Rai, Residents of Village- Sirsa Bali, P.O.- Sarai Bux, P.S.- Bheldi, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Nagendra Rai, Advocate Mr. Navin Nikunj, Advocate Mr. Koshalendra Rai, Advocate
For the Respondent/s	:	Mr. Basant Kumar Singh, Advocate Mr. Vishesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

4 22-08-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed for setting aside the order dated 12.06.2018 passed by learned Munsif-3, Chapra in Title Suit No. 642 of 2017.

3. Brief facts of the case are that plaintiffs / respondents have filed Title Suit No. 642 of 2017 for removal of encroachment from 8 Dhurs northern portion of the suit property and recovery of possession over the same and also demarcation of the suit property. The claim of the plaintiffs is on the basis of R.S. Khatiyani. On the other hand, the defendants claim that there are oral settlement of 5 ½ Dhurs northern



portion of the suit land. They are in the possession of the said land after making the construction of Khaprail Dalaan on the same. They have denied the allegation of encroachment. The plaintiffs / respondents filed a petition on 05.01.2018 for appointment of Survey Knowing Pleader Commissioner for measurement of the suit property and also fixing stone pillars over it which was objected by the defendants and after hearing the parties the said application was dismissed vide order dated 13.03.2018 and observed that the said prayer may be granted only after disposal of the suit. However, the plaintiffs / respondents again filed a fresh petition dated 20.03.2018 with payer for appointment of Survey Knowing Pleader Commissioner for measurement of the suit land which was opposed by the defendants / petitioners by filing the rejoinder petition taking various pleas including the *res judicata* also. The learned Court below allowed the said petition for appointment of Survey Knowing Pleader Commissioner vide the impugned order.

4. Learned counsel for the petitioners submits that despite the objection taken by the petitioners by filing rejoinder and also raised the said objections stated therein during the argument, the leaned Court below has not dealt with those



objections and by the cryptic order passed the impugned order which is not tenable in law. He has further submitted that earlier order of the rejection of the Survey Knowing Pleader Commissioner was not challenged before any Court and the same attained finality on the point of appointment of Survey Knowing Pleader Commissioner and on the same ground appointment of Survey Knowing Pleader Commissioner during the proceeding of the suit is not correct. Accordingly, he has prayed to set aside the impugned order and prayed that the matter be remitted to the Court below for deciding a fresh by reasoned order on the said application dated 12.06.2018 of the plaintiffs / respondents for appointment of Survey Knowing Pleader Commissioner.

5. On the other hand, learned counsel for the respondents submits that the respondents are the owners of the suit property and the learned Court below has rightly allowed the petition for appointment of Survey Knowing Pleader Commissioner in the interest of justice and the same is not required for interference by this Court.

6. Having heard learned counsel for the parties and considered the material on record and from perusal of the impugned order, it appears that the same is not speaking order



and the learned trial Court without considering the objection of the defendants / petitioners allowed the application for appointment of Survey Knowing Pleader Commissioner. The reason is the soul of justice, any order passed whether in exercise of judicial or administrative powers vested in the authority must be speaking. An order disposing of an application necessarily requires recording of reasons in support of the conclusion which lacks in the impugned order.

7. In view of the aforesaid facts and circumstances, the impugned order dated 12.06.2018 is set aside and this Civil Miscellaneous Application is, accordingly, allowed.

8. Learned Court below is directed to decide the petition dated 20.03.2018 filed on behalf of plaintiffs for appointment of Survey Knowing Pleader Commissioner by reasoned order within one month and both the parties are directed to cooperate the learned trial Court.

(Sunil Dutta Mishra, J)

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