

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.883 of 2019

1. Nande Lal Mandal, S/o Late Shubh Narayan Mandal, Resident of Village-Karhara Police Station-Bheja, District-Madhubani
2. Isaki Lal Mandal, S/o Late Shubh Narayan Mandal, Resident of Village-Karhara Police Station-Bheja, District-Madhubani

... .. Petitioner/s

Versus

1. Bhutai Mandal, S/o Late Mahabir Mandal, Resident of Village-Amahi Tole-Harnahi, P.S.-Ghoghardiha, District-Madhubani
2. Surya Narayan Lal, S/o Late Shiv Lal Das, Resident of Village-Ghogharama, P.S. Hayaghatt, District-Darbhanga

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Prasad, Advocate
For the Respondent/s : Mr. Ramchandra Jha Raman, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

2 19-07-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous application has been filed under Article 227 of the Constitution of India against the order dated 17.11.2018 passed by learned Munsif, Jhanjharpur in Title Suit No. 24 of 1997 whereby and whereunder petition dated 14.06.2018 filed by the defendants / petitioners under Order 26 Rule 9 of the C.P.C. for appointment of Pleader Commissioner has been rejected.

3. The brief fact of this case is that the plaintiff / respondent No. 1 filed Title Suit No. 24 of 1997 in the Court of learned Munsif, Jhanjharpur for declaration of title and confirmation of possession alongwith other reliefs. The suit was



contested by the respondents by filing the written statement. The evidence on behalf of both the parties have been concluded. During the final argument the defendants / petitioners filed the petition dated 14.06.2018 under Order 26 Rule 9 C.P.C. for appointment of Pleader Commissioner which was rejected by the learned Court below.

4. Learned counsel for the petitioners submits that to ascertain the suit land the appointment of Pleader Commissioner is necessary. He has further submitted that for proper and effective adjudication of the suit, it is necessary to ascertain physical feature of the land in question. The learned trial Court ought to have allowed the appointment of Pleader Commissioner.

5. On the other hand, learned counsel for the respondents submits that the defendants / petitioners filed the said application for appointment of Pleader Commissioner during the final argument with sole purpose to prolong the disposal of the case. He has further submitted that the case has been filed for declaration of title and confirmation of possession which may be adjudicated on the basis of the evidence, oral and documentary, produced by the parties in support of their claim.

6. Having heard learned counsel for the parties and



considering the facts and circumstances of the case and on perusal of the impugned order, it appears that the learned Court below observed that the case is 21 years old and both the parties have completed their evidence and the suit is pending for final argument on behalf of the parties.

7. The law is well settled that in a suit particularly for possession, it is the duty of the parties to produce evidence and the Court cannot collect the evidence on behalf of the parties.

8. It is clear from reading of Order 26 Rule 9 of the Code that:-

(i) Primarily it is the discretion of the trial Court to issue a Commission for local investigation and,

(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.

9. In **Padam Sen and Another Vs. The State of U.P.** reported in **AIR 1961 SC 218**, the three Judge Bench of the Hon'ble Supreme Court has held that it is not the business of the Court to collect evidence in favour of one party. In a matter related to investigation into the disputed question of fact of



possession, the power of appointment of Commission for local investigation cannot be exercised by the Court to assist the party to collect the evidence, where the party can collect the evidence himself.

10. During pendency of trial and before the judgment if the trial Court finds that any issue requires clarification or elucidation, the Court may suo motu appoint Commissioner to submit report for which no application is required. The scope of Order 26 Rule 9 of CPC is very limited.

11. In view thereof, this Court does not find any jurisdictional error or illegality in the impugned order and there is no valid ground to interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India.

12. This Civil Miscellaneous Application is, accordingly, dismissed. However, there shall be no order as to costs.

(Sunil Dutta Mishra, J)

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