

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.916 of 2018

1. Sunita Devi daughter of Late Ram Karan Sahni Resident of Village - Saidpur, P.O. Saidpur, P.S. Chakmehsi, District - Samastipur.
2. Tara Devi daughter of Late Ram Karan Sahni, Resident of village – Saidpur, P.O. Saidpur, P.S. Chakmeshi, District – Samastipur.
3. Raja Ram Sahni son of Late Ram Karan Sahni, Resident of village – Saidpur, P.O. Saidpur, P.S. Chakmeshi, District – Samastipur.
- 4.1. Most Munakiya Devi Widow of Late Ram Dayal Sahani, Resident of Village Saidpur, P.O. Saidpur, P.S. Chakmehsi, District Samastipur.
- 4.2. Anil Kumar, son of Late Ram Dayal Sahani, Resident of Village Saidpur, P.O. Saidpur, P.S. Chakmehsi, District Samastipur.
- 4.3. Sunil Kumar Sahani, Son of Late Ram Dayal Sahani, Resident of Village Saidpur, P.O. Saidpur, P.S. Chakmehsi, District Samastipur.
5. Shiv Chandra Sahni son of Late Ram Karan Sahni All residents of Village - Saidpur, P.O. Saidpur, P.S. Chakmehsi, District - Samastipur.

... .. Petitioners

Versus

1. Dr. Sanjiv Kumar Pandey son of Late Janardan Pandey resident of Village and P.O. Saidpur, P.S. Chakmehsi, District - Samastipur.
- 2.1. Most. Radhika Devi widow of Late Shyam Nandan Prasad Pandey, Resident of Village and P.O. Saidpur, P.S. Chakmehsi, District - Samastipur.
- 2.2. Babbu Pandey son of Late Shyam Nandan Prasad Pandey, Resident of Village and P.O. Saidpur, P.S. Chakmehsi, District - Samastipur.
3. Ajai Kumar Roy son of Late Surya Narain Roy resident of Village Sultanpur Morwa Roy Tole, P.O. Morwa, P.S. Sarairanjan, District Samastipur.
4. Urmila Devi widow of Late Ram Lalit Sahni
5. Rukmini Devi daughter of Late Ram Lalit Sahni
6. Amit Sahni son of Late Ram Lalit Sahni
7. Ranjit Sahni son of Late Ram Lalit Sahni Respondent nos. 4 to 7 are residents of Village Saidpur, P.O. Saidpur, P.S. Chakmehsi, District Samastipur.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Jitendra Kishore Verma, Advocate Ms. Smeta Raj, Advocate Ms. Shatakshi Sahay, Advocate Mr. Ravi Raj, Advocate
For the Respondent/s	:	Mr. Surya Narayan Roy, Advocate



CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

16 24-07-2023 Heard learned counsel for the parties.

2. The present Civil Miscellaneous Application has been filed for setting aside the order dated 03.11.2017 passed in Title Suit No. 22 of 2000 by the learned Additional Munsif, Samastipur, whereby and whereunder the petition of the petitioners for appointment of Survey Knowing Pleader Commissioner in light of order dated 12.08.2015 passed by this Court in C.W.J.C. No. 20159 of 2010 has been rejected.

3. It appears from the application that Respondent 1st set are plaintiffs in the suit before the learned Court below who have filed Title Suit No. 22 of 2000 for declaration of their title on suit property which has been contested by Defendant 1st set / petitioners. The petitioners claimed that suit property was purchased by his ancestors who got possession and amalgamated the suit land with their lands of other plots and continued in possession. The petitioners filed a petition on 09.03.2005 for appointment of Survey Knowing Pleader Commissioner to report as to whether lands of disputed plot No. 3283 is amalgamated with lands of other plots so that real controversy in dispute is properly adjudicated. The plaintiff objected the same on the ground that there is already a report of



Survey Knowing Pleader Commissioner on record accordingly there is no need for further appointment of fresh Survey Knowing Pleader Commissioner. The Court below disposed of the petition observing that the Court will consider the prayer of defendant 1st set / petitioners for fresh appointment of another Survey Knowing Pleader Commissioner at the time of final hearing if the Court feels that such further report of Survey Knowing Pleader Commissioner is required. The suit reached at the stage of final argument. On 06.08.2010, the petitioners in pursuant to his liberty granted vide order dated 28.02.2006 renewed his prayer for appointment of Survey Knowing Pleader Commissioner to report on the point of amalgamation of the said plot with other plots but the same was rejected by the Court below vide order dated 05.10.2010 which was challenged before this Court.

4. This Court vide order dated 12.08.2015 passed in CWJC case No. 20159 of 2010 had permitted the petitioners to approach the trial Court for appointment of fresh Survey Knowing Pleader Commissioner for a limited purpose i.e. to ascertain as to whether there is any evidence available on subject land to show that the same was amalgamated with the land of the plaintiff purchased earlier. It was further directed that



on such application being filed, the Court shall appoint the Survey Knowing Pleader Commissioner on the limited point only and grant dates / adjournments spanning over three weeks from passing of the order for getting the report of Pleader Commissioner. In case the petitioners default in doing so, the trial Court shall proceed further on the basis of the material on record and dispose of the case.

5. Learned counsel for the petitioner submits that despite his best efforts he could not communicate petitioners about the order dated 12.08.2015 passed by this Court in C.W.J.C. No. 20159 of 2010 as there was communication gap between the counsel and the petitioners because the mobile number given to the counsel had changed and petitioner no. 5 who was doing the pairvi in the case got seriously ill and was being treated at AIIMS, New Delhi. Hence, the petitioners could not promptly comply the direction of this Court in time. It was a bona fide mistake and not deliberate one.

6. Although there is delay of 2 years but the case is at the same stage, the final argument has not started.

7. Learned counsel for the respondents submits that despite the order of this Court, the petitioner has not filed appropriate



application within time. However, he has conceded that this case may be disposed of by imposing heavy cost upon the petitioners for not filing the application within time and with observation to decide the petition within time frame.

8. On the consent of the learned counsel for the parties and in the interest of justice considering the facts and circumstances of the case, this Civil Miscellaneous Application is allowed and impugned order dated 25.11.2017 is set aside subject to cost of Rs. 5,000/- to be paid by the petitioner to the plaintiff / respondent in the trial Court.

9. Learned court below is directed to pass a fresh order on the petition of petitioner for appointment of fresh Survey Knowing Pleader Commissioner for the limited purpose as stated in the aforesaid order dated 12.08.2015 passed by this Court in the Civil Writ Jurisdiction Case No. 20159 of 2010.

10. Learned trial Court is directed to dispose of the said application within four weeks from the date of receipt / production of this Order. Both the parties are also directed to cooperate the trial Court for disposal of the said application within the said time period and also cooperate for expeditious disposal of the suit.



11. This Civil Miscellaneous Application is, accordingly,
disposed of with aforesaid observation and direction.

(Sunil Dutta Mishra, J)

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