

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1292 of 2017

Chandra Kanta Devi, Wife of late Raj Nandan Singh, Resident of Village-
Konch, P.S. Konch, District- Gaya at Present residing at Village- Hisua
Panchu , P.S. Hisua, District-Nawada.

... .. Petitioner/s

Versus

1. Zila Parishad, Nawada, Through Its Chief Executive Officer, Nawada,
District- Nawada.
2. District Engineer, Zila Parishad Nawada, P.S. and District- Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dronacharya, Sr. Advocate Mr. Arghesh Kumar, Advocate
For the Respondent/s	:	Mr. Anwar Karim, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 28-03-2024

Heard learned counsel for the parties on the point of admission and I intend to dispose of the instant petition at the stage of admission itself.

2. The instant petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 24.04.2017 passed by learned Munsif, Nawada in Title Case No. 115 of 1994 whereby and whereunder the learned trial court rejected the application dated 17.03.2017 filed on behalf of the plaintiff under Order 26 Rule 9 of the Code of Civil Procedure (hereinafter 'the Code') for appointment of a Pleader Commissioner.

3. Learned counsel for the petitioner submits that the



petitioner as a plaintiff filed Title Suit No. 115 of 1994 in the court of learned Munsif, Nawada seeking following relief(s):-

“(i) For a declaration of title and possession of the plaintiff.

(ii) Possession of the plaintiff over suit property be confirmed.

(iii) A decree for permanent injunction be also passed restraining the defendants from interfering in any way in her peaceful possession from the suit property as well as cost and other reliefs.”

4. Briefly stated facts of the case are that the land of Plot No. 1655(old), Khata No. 312(old) measuring an area 5.13 decimal was recorded in cadastral survey in the name of the then District Board, defendant no.1, under the present dispensation, the nature of the land was *parti* and was now in use of the District Board. The said land was settled in favour of the plaintiff having area of 183 x 45 links vide Memo No. 1831 dated 02.07.1958 by the then chairman of the District Board, Gaya. Thereafter, a single storied house was built on the said land. Thereafter, the petitioner, her daughter and her son-in-law started residing in this house. Other persons were also settled some land by the District Board. But the land settled in the name of plaintiff came to be recorded in the name of defendant no.1 appertaining to Khata No. 713, Plot No. 868 having area of



6 decimal. The plaintiff has perfected her possession and claimed her title over the land in question by way of adverse possession. The suit progressed and in course of hearing on injunction matter the defendant prayed for appointment of Pleader Commissioner which was allowed on 18.04.1996 but the defendant did not take any steps for and rather filed a petition for withdrawal from the liability of investigation by the Pleader Commissioner. Thereafter, the plaintiff applied for appointment of Pleader Commissioner which was allowed and the said Pleader Commissioner has already been examined as a plaintiff's witness and his report has been marked as Annexure-3 of the present petition.

5. Thereafter, on 17.03.2017, the plaintiff again filed an application for appointment of another Pleader Commissioner to examine the nature of construction of the building as to whether construction was like a private building or like an official quarter for the employees of the defendants. The contention of the plaintiff/petitioner was opposed by the respondents/defendants by way of rejoinder. After hearing the parties, vide order dated 24.04.2017, the learned Munsif, Nawada rejected the application dated 17.03.2017 which has been challenged before this Court.



6. Learned counsel for the petitioner submits that there is no bar on appointment of second Pleader Commissioner and the learned trial court failed to exercise its jurisdiction and passed an illegal order which is fit to be set aside. It has passed its order rejecting the petition of the petitioner on the ground that earlier at the instance of plaintiff/petitioner, Pleader Commissioner was appointed who submitted his report and was examined as a witness of the plaintiff. But the same cannot be relevant for the purpose of appointment of the Pleader Commissioner for the second time. The learned trial court failed to appreciate that to ascertain the nature of the construction of the suit house which was just and proper to resolve the issue by appointment of Pleader Commissioner. Thus, the learned counsel submits that the impugned order is not sustainable and the same is fit to be set aside.

7. Learned counsel appearing on behalf of the respondents vehemently contended that there is no merit in the submission of learned counsel for the petitioner. Learned counsel for the respondents further submits that the learned trial court has taken note of the fact that on the written application of the plaintiff/petitioner, Pleader Commissioner was appointed earlier and the learned Pleader Commissioner submitted his



report which was exhibited and the Pleader Commissioner was examined as a witness of the plaintiff. The earlier report of the Pleader Commissioner is specific that the suit house may be quarter of Zila Parishad or Government. Now the plaintiff/petitioner wants to gather further evidence in his favour and the same cannot be allowed under the garb of appointment of Pleader Commissioner for giving opinion on the nature of the suit building. Learned counsel further submits that the defendants have concluded their arguments and the argument of the plaintiff was going on. The plaintiff/petitioner does not want the trial court to dispose of the matter and has been dragging on the matter since 1994. Learned counsel further submits that the learned trial court has considered all the issues and the points raised and thereafter passed a reasoned order which must be sustained.

8. Having regard to the rival submissions and going through the record, it is apparent that at the instance of the plaintiff/petitioner, Pleader Commissioner was appointed who submitted his report and who was also examined as the witness of the plaintiff. If the plaintiff/petitioner want to have benefit of opinion of the learned Pleader Commissioner on certain point, she had the opportunity for the same at the time of examination



of the learned Pleader Commissioner and not by getting another Pleader Commissioner appointed again in the matter. Moreover, the learned Pleader Commissioner has already given his opinion on the point raised by the plaintiff/petitioner. If the report of the learned Pleader Commissioner does not favour the plaintiff, her prayer for appointment of another Pleader Commissioner with overt intention of gathering evidence on the point of the nature of the building on the basis of its construction cannot be allowed. Moreover, the learned trial court has considered all the aspects of the matter and has also recorded the chronology of the events which explains the long pendency of the case before it.

9. For the aforesaid reason, I do not find any infirmity in the impugned order dated 24.04.2017 passed by the learned Munsif, Nawada in Title Suit No. 115 of 1994 and the same is affirmed

10. Accordingly, the instant petition stands dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.04.2024
Transmission Date	NA

