

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.342 of 2019

1. Nanda Devi and Ors W/o Sri Muneshwar Pandey Resident of Brindavan Colony,Road No.1/A,Ram Nagar,Bochachak,Police Station-Phulwarisharif,Dist.-Patna
2. Rakha Kumari W/o Sri Jitendra Pd. Resident of Brindavan Colony,Road No.1/A,Ram Nagar,Bochachak,Police Station-Phulwarisharif,Dist.-Patna
3. Surajmal Chaudhary S/o Late Benga Chaudhary Resident of Brindavan Colony,Road No.1/A,Ram Nagar,Bochachak,Police Station-Phulwarisharif,Dist.-Patna
4. Manohar Chaudhary S/o Late Sohrai Chaudhary Resident of Brindavan Colony,Road No.1/A,Ram Nagar,Bochachak,Police Station-Phulwarisharif,Dist.-Patna
5. Lalti Devi w/o Late Lalji Chaudhary Resident of Brindavan Colony,Road No.1/A,Ram Nagar,Bochachak,Police Station-Phulwarisharif,Dist.-Patna
6. Santosh Kr. Suman S/o Late Lalji Chaudhary Resident of Brindavan Colony,Road No.1/A,Ram Nagar,Bochachak,Police Station-Phulwarisharif,Dist.-Patna

... .. Petitioner/s

Versus

1. Smt. Madhu Devi and Ors W/o Sri Bhanu Prasad Resident of Brindavan Colony,Ram Nagar, Bochachak,P.S. Phulwarisharif,Dist.Patna
2. Smt. Omi Devi W/o Ram Nath Singh Resident of Brindavan Colony,Ram Nagar, Bochachak,P.S. Phulwarisharif,Dist.Patna
3. Ram Janam Mahto S/o Late Mahadeo Singh Resident of Brindavan Colony,Ram Nagar, Bochachak,P.S. Phulwarisharif,Dist.Patna
4. Suraj Prasad @ Suman Kumar S/o Late Tunna Ram Resident of Ram Nagar,Bochachak P.S. Pulwarisharif,Dist.Patna
5. Krishna Kumar Suman S/o Late Lalji Chaudhary Resident of Brindawan Colony, Road No.1/A,Ram Nagar, Bochachak,P.S. Phulwarisharif,Dist.Patna
6. Neetu Kumari D/o Late Lalji Chaudhary Resident of Brindawan Colony, Road No.1/A,Ram Nagar, Bochachak,P.S. Phulwarisharif,Dist.Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.J.S. Arora, Sr. Adv.
	:	Mr. Manoj Kumar, Adv.
For the Respondent No. 1 & 2	:	Mr.Arun Kumar Arun, Adv.
	:	Mr. Akash Arun, Adv.
	:	Ms. Pooja Arya, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER



3 23-02-2024 Heard learned counsel for the petitioners and learned counsel for the respondents no. 1 and 2.

2. On the point of admission and with the consent of the parties, the matter is being taken up for disposal at the stage of disposal itself.

3. The present petition under Article 227 of the Constitution of India has been preferred on behalf of the petitioners for quashing the order dated 20.12.2018 passed by learned Sub Ordinate Judge – VI, Danapur in Title Suit No. 386 of 2016, whereby the prayer with regard to appointment of Survey Knowing Advocate Commissioner was rejected.

4. Learned senior counsel appearing on behalf of the petitioners submits that the petitioners are plaintiffs before the learned trial court and have filed Title Suit No. 386 of 2016 seeking following reliefs:-

i. That on adjudication of plaintiffs title over Schedule – III land which is part and parcel of Schedule – II to II/D, it be held and declare that defendant got no concern in any manner with any part of Schedule-III land and whole act from the side of defendants are illegal.

ii. That the possession of plaintiffs over Schedule-III land be confirmed and if the plaintiff found dispossessed from Schedule – III land than decree for recovery of possession be passed in favour of plaintiff and against the defendants and the plaintiffs be put in possession over Schedule – III land through the process of court by dispossessing and demolishing any construction made over



Schedule – III land.

iii. That decree of permanent injunction be passed in favour of plaintiffs and against the defendants.

iv. That by grant of ad-interim injunction the defendants be restrain not to make any construction and change physical feature of Schedule – III land and direct them to maintain status quo.

v. That the cost of the suit be awarded to the plaintiffs and against the defendants.

vi. That any other relief or reliefs to which the plaintiffs are found entitled be passed in favour of the plaintiff.

5. Learned senior counsel further submits that the petitioners filed an application before the learned Trial Court under Order 26 Rule 10-A and Section 151 of Code of Civil Procedure for appointment of a Survey Knowing Advocate Commissioner to report on the points which are as follows:-

i. To inspect verify & report after scientific measurement about detail physical feature of suit land detail in schedule iii of the plaint and the same be shown in the sketch Map?

ii. To report after scientific measurement that said schedule ii land is part and parcel of S.P. No. 919 or not?

iii. To measure the house of defendants with length and width with detail description of physical feature of defendants and the same shown in sketch map?

iv. To report southern survey line of S.P. No. 919 and eastern part of S.P. 919 is in straight line and whether there is boundary wall on southern



survey line of S.P. No. 918 with is detail description of same shown in sketch map?

v. To report whether passage left by vendr of S.P. 920 towards north and of S.P. No. 920 running east to west upto house of defendant no. 1 Madhu Devi as well as defendant no. 2 Omi Devi exist over said passage portion or not?

vi. To report almost any other point or points shown as the spot by the plaintiffs?

6. The learned trial court rejected the application dated 31.07.2018 filed for appointment of Survey Knowing Advocate Commissioner and both parties are in agreement over appointment of Survey Knowing Pleader Commissioner for scientific measurement of the land as to demarcation of the plots of the parties.

7. Learned senior counsel further submits that respondents no. 1 and 2, who are the contesting respondents, also want scientific demarcation of the land of the parties as the petitioners claim title and possession over plot no. 919 whereas the respondent no. 1 and 2 claim title and possession of plot no. 920.

8. The learned counsel appearing on behalf of respondents no. 1 and 2 submits that the the answering respondents have no objection to the measurement and



demarcation by survey knowing pleader commissioner if it is done scientifically.

9. Without going into the merits of the case and without accepting the claim of parties, with the consent of the parties, learned trial court is directed to get a Survey Knowing Pleader Commissioner appointed for scientific measurement and demarcation of plot no. 919 and 920.

10. The said order is without prejudice to the rights of the parties.

11. Accordingly, the order dated 20.12.2018 is set aside and present petition stands allowed.

(Arun Kumar Jha, J)

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