

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.386 of 2023**

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Ram Rakshpal Singh, S/o- Late Raj Nandan Singh, resident of Village- Jigrahwa, P.S. Maharajganj, District- Siwan at present residing at Mohalla - Modidih no. 10, Chhotanagari, P.S. - Dhanbad Town, District- Dhanbad (Jharkhand).

... .. Petitioner/s

Versus

1. Parmeshwar Singh, S/o Late Rajnandan Singh, resident of village- Jigrahwah, P.S. - Maharajganj, District- Siwan.
2. Deeplesh Singh, S/o Parmeshwar Singh, resident of village- Jigrahwah, P.S. - Maharajganj, District- Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Singh, Advocate
For the Respondent/s	:	Mr. Ranjan Kumar Dubey, Advocate
		Mr. Kumar Gaurav, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 15-07-2024

Heard learned counsel for the petitioner as well as learned counsel for the respondents on the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The instant petition has been filed by the plaintiff/petitioner under Article 227 of the Constitution of India for quashing the order dated 04.01.2023 passed in Title Suit No. 724 of 2018 whereby and whereunder the report dated 19.10.2021 submitted by the learned Survey Knowing Pleader Commissioner was rejected by the learned trial court.

3. Learned counsel for the petitioner submits that the



petitioner is the plaintiff before the learned trial court who has filed Title Suit No. 424 of 2018 in the court of learned Munsif-2, Siwan seeking declaration with regard to Schedule 1 property and has sought further relief by way of issuance of direction to deliver possession over the suit land after removing the construction made by the defendants. During pendency of the suit, an application was filed on 01.07.2019 by the plaintiff under Order 26 Rule 9 of the Code of Civil Procedure (hereinafter referred to as 'the Code') on prayer for appointment of Survey Knowing Pleader Commissioner on the following points:-

(i) Whether the land having area of 14¼ dhur is the part of 1 katha land of Schedule 2 land and whether the defendants have encroached and made construction over the said portion of the land.

(ii) The Survey Knowing Pleader Commissioner be directed to measure the length and breadth of the disputed land and the structure existing over it.

4. Thereafter, vide order dated 23.11.2019, the learned trial court allowed the application and directed the Survey Knowing Pleader Commissioner to report on the point whether the Schedule 2 land is the part of Schedule 1 land mentioned in the plaint. Report dated 19.10.2021 was submitted by the



learned Survey Knowing Pleader Commissioner according to his findings. But the said report was rejected by the learned trial court.

5. Learned counsel further submits that the order of the rejection of the report is erroneous and without consideration of facts and law. The learned trial court was required to pass a fresh order for re-appointment of the Survey Knowing Pleader Commissioner if it rejected the earlier report of the Survey Knowing Pleader Commissioner in terms of Order 26 Rule 10(3). Learned counsel further submits that the report was rejected merely on the ground that the report was not submitted in terms of specific orders of the learned trial court. So on mere technicality the report has been rejected, though it was a detailed report. Learned counsel further submits that in the similar circumstance the learned Single Judge of this Court in the case of *Smt. Sugga Devi Vs. Pramod Chaudhary*, reported in *(2000) 1 PLJR 847* while considering the rejection of the report of the Survey Knowing Pleader Commissioner by the trial court held that when the report of the Survey Knowing Pleader Commissioner was rejected then it ought to have been sent for the second time to do the survey properly and submit a report as per specific direction. Thus, the learned counsel further



submits that it was incumbent upon the learned trial court to direct the Survey Knowing Pleader Commissioner to submit the report in terms of the writ handed over to the Survey Knowing Pleader Commissioner for survey of the suit plot. Therefore, the order impugned is not sustainable and the same needs be set aside.

6. Learned counsel appearing on behalf of the defendants/respondents opposes the submission made on behalf of the petitioner. Learned counsel for the respondents submits that the writ was issued only for submitting a report on the point whether the Schedule 2 land is the part of the Schedule 1 land mentioned in the plaint. But the Survey Knowing Pleader Commissioner went over board and submitted a detailed report in favour of the plaintiff. The learned trial court rightly rejected the report of the Survey Knowing Pleader Commissioner. Learned counsel further submits that Order 26 Rule 10 (3) use the word 'may' for directing a further inquiry if the court is dissatisfied with the proceedings of the Survey Knowing Pleader Commissioner. So this part of reappointment/ fresh appointment is not mandatory and it is subject to the satisfaction of the Court if it feels that fresh appointment/re-appointment is required in the matter.



7. Having regard to the rival submission, the issue before this Court is whether the trial court has rightly rejected the report of the learned Survey Knowing Pleader Commissioner in the facts of the case, and if, the report was to be rejected, whether there was requirement of issuing directions to the Survey Knowing Pleader Commissioner for making further inquiry. From the facts as discussed hereinabove, it is evident that the learned Survey Knowing Pleader Commissioner went beyond the writ issued to him and for this reason the rejection order was proper. However, in the light of the decision of the learned Single Judge of this Court in the case of **Smt. Sugga Devi** (supra), the case is squarely covered and it was for the trial court to pass further orders at the time of rejection for re-appointment/fresh appointment of the Survey Knowing Pleader Commissioner in terms of the writ since the issue remained unresolved on that point.

8. Therefore, the impugned order could not be sustained to the aforesaid extent and hence the same requires modification to the extent that the learned trial court is duty bound to pass orders for further survey of the suit plot in terms of Order 26 Rule 10(3) of the Code. Therefore, so far as the order rejecting the report of the Survey Knowing Pleader



Commissioner is concerned, the same is affirmed. However, the learned trial court is directed to pass orders for further inquiry to be made by the learned Survey Knowing Pleader Commissioner on specific point of writ. Hence, the order dated 04.01.2023 passed in Title Suit No. 724 of 2018 stands modified to the aforesaid extent.

9. Accordingly, the instant civil miscellaneous petition is partly allowed and disposed of.

(Arun Kumar Jha, J)

Balmukund/-
Durgesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.07.2024
Transmission Date	NA

