

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.812 of 2019**

Madhuri Sinha Wife of Om Prakash Sinha Resident of Vilalge -Ekhlashpur,
P.S.- Bhabhua, District- Kaimur, presently residing at Ward No. 1,P.O. and
P.S. Bhabhua, District - Kaimur, Bihar, Pin code- 821101.

... .. Petitioner/s

Versus

1. Surendra Singh Son of Late Laljee Singh Resident of Vilalge -Barna, P.S.-
Bhabhua, District- Kaimur, presently residing at Ward No. 1,P.O. and P.S.
Bhabhua, District - Kaimur, Bihar, Pin code- 821101.
2. Ashok Singh Son of Surendra Singh Resident of Vilalge -Barna, P.S.-
Bhabhua, District- Kaimur, presently residing at Ward No. 1,P.O. and P.S.
Bhabhua, District - Kaimur, Bihar, Pin code- 821101.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Prashant Sinha, Advocate
For the Respondent/s : Mr.Narendra Kumar, Advocate

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

Date : 23-07-2024

The present Civil Miscellaneous Petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 09.01.2019 passed by learned Munsif, Kaimur at Bhabhua in Title Suit No. 55 of 2006, whereby and whereunder the learned Munsif rejected the objection filed by the petitioner upon the report of the Advocate Commissioner. The petitioner has also sought direction to the learned trial court to appoint an impartial survey knowing Advocate Commissioner for correct and proper measurement of the of the suit land in scientific manner apart from other reliefs.



2. Briefly stated, the facts of the case as it appears from the record is that the petitioner is the plaintiff of Title Suit No. 55 of 2006 and she has filed the title suit for declaration of title on land of of Schedule 'ka', on the revisional survey Plot No. 165 claiming it to be her purchased land and further sought permanent injunction against the respondents/defendants for not disturbing her peaceful possession over the suit property. The plaintiff contended that she purchased 24 decimals of land under revisional survey Plot No. 165, Khata No. 66, Thana No. 440 in Mauza – Rampur, Thana – Bhabhua through registered sale deed dated 02.05.1978 and since the date of purchase she has been coming in possession over the said land. The vendor of the petitioner had left 4 decimals of land on the southern portion of the land from east to west as 'Rasta' and after that the entire land of Khesra No. 165 has been vested in the petitioner in terms of the sale deed. The plaintiff constructed her house on 2 decimals of land. The plaintiff kept egress of her house towards the canal in east side. On the other hand, the defendants purchased a part of Plot No. 163 having an area of 5 decimals situated on the northern side of Plot No. 165 of the plaintiff. They constructed their house and egress of their house is towards east and water discharge is towards east. The



defendants also constructed a wall on the southern side. The defendants started claiming right over the land, over which the plaintiff has constructed her drainage for discharge of water. This piece of land is having width of six feet. The plaintiff explained to the defendants that the defendants have constructed their house over their entire purchased land in Plot No. 163 and no land is left on southern side of their house. The plaintiff filed title suit against the defendants for permanent injunction over the Schedule 'ka' land as shown on the map annexed. The defendants filed their written statement claiming that land in dispute is part of Khesra No. 163 and not the part of Khesra No. 165. During the pendency of the suit, the plaintiff filed an application under 26, Rule 10 of the Code of Civil Procedure (hereinafter as 'the Code') on 31.07.2006 and prayed for appointment of Survey Knowing Advocate Commissioner to verify whether the suit property is part of revisional survey Plot No. 165 or not; whether the drainage of the house of the petitioner passes through the suit property or not and whether there is any window in the house of the defendants opening towards the suit land. A Survey Knowing Advocate Commissioner was appointed by the learned trial court and he submitted his report on 20.12.2009. The plaintiff claimed that



this report was prepared in most unscientific manner recording wrong finding that suit property is part of Plot No. 165 as well as Plot No. 163. The plaintiff raised a number of objections to this report of the Survey Knowing Advocate Commissioner who was also cross-examined by the plaintiff. Thereafter, the plaintiff filed another petition under Order 26 Rule 9 of the Code on 21.02.2018 for appointment of non-survey knowing Advocate Commissioner to report about certain physical features of the suit land and also regarding map annexed to the plaint. The learned trial court rejected the objection petition vide order dated 09.01.2019 upholding the report of Survey Knowing Advocate Commissioner. This order has been challenged by the plaintiff.

3. Learned counsel appearing on behalf of the plaintiff/petitioner submitted that the learned trial court has wrongly rejected the objection petition filed by the plaintiff without cross checking the report of Survey Knowing Advocate Commissioner with other report for which the petitioner had filed an application under Order 26 Rule 9 of the Code. Learned counsel further submitted that the Survey Knowing Advocate Commissioner has taken the fixed point on the basis of his imagination and convenience and has not taken the fixed point



as provided in the survey map of the village. The learned Advocate Commissioner did not obtain the signatures of the plaintiff or the defendants on the field book. Further, the learned Advocate Commissioner has not explained the size of 'Kari' which he used for measurement of the land. The learned Advocate Commissioner has admitted that plaint and written statement were not with him at the time of measurement. Therefore, the report was prepared in most unscientific manner leading to wrong measurement of the land of the plaintiff as well as defendants. Learned counsel further submitted that the learned Advocate Commissioner has not made triangle which is required for survey. The learned Advocate Commissioner did not take the fixed point in scientific manner. The finding arrived by by the lerned Advocate Commissioner about part of disputed land belonging to Plot No. 163 is erroneous as the learned Advocate Commissioner has incorrectly measured 34 'Kari' towards east instead of 40 'Kari'. The plaintiff has got appointed another Pleader Commissioner at her own initiative and the report of this Pleader Commissioner is against the finding recorded by Survey Knowing Advocate Commissioner appointed by the court. However, the learned trial court failed to appreciate that the finding of the learned Advocate



Commissioner are wrong and baseless. Therefore, the rejection of the objection petition filed by the plaintiff vide impugned order is not sustainable and the same needs to be set aside.

4. Per contra, learned counsel appearing on behalf of the defendants/respondents vehemently submitted that there is no infirmity in the impugned order and the objection petition of the plaintiff has been rightly rejected by the learned trial court. Learned counsel submitted that the learned trial court has considered each and every point raised by the plaintiff in the objection and thereafter, came to a finding that none of the objections raised by the plaintiff was sustainable. Learned counsel further submitted that the proper reasoning has been given with the facts and circumstances and the impugned order is a speaking order. But the plaintiff wants the report of the learned Advocate Commissioner to be in her favour and for this reason she has again filed an application for appointment of another Advocate Commissioner which cannot be allowed. It is not the duty of the court of collect evidence on behalf of the plaintiff who is in the habit of reaching to the court, if any problem or difficulty arises, with a prayer for appointment of Advocate Commissioner. The plaintiff is misusing the process of law. Learned counsel further submitted that a case was also



lodged before the Anchaladhikari for measurement of disputed plot and in that case also Anchal Amin has found that some of the disputed land belongs to the defendants of Plot No. 163. Learned counsel also submitted that the objection regarding Advocate Commissioner not making a triangle is not sustainable if survey was done by forming quadrangle and other transverse structures. A survey could be done by forming transverse and the learned Advocate Commissioner has completed his enquiry by making transverse and has scientifically chosen the fixed point. Thus, learned counsel prays for dismissal of the present petition.

5. I have given my thoughtful consideration to the rival submission of the parties. Without going into minutest details of the rival contention, it is much apparent that the dispute is completely factual and the learned trial court, in its order, has considered each and every issue raised by the plaintiff. The learned Advocate Commissioner was also put to cross-examination and the learned trial court has also discussed the points taken up in the cross-examination. There being no discrepancy as such in the report submitted by the learned Advocate Commissioner as the dispute is entirely related to factual aspect of the case of the parties, this Court would not



like to take a different view than the finding recorded by the learned Munsif as this Court does not find any infirmity in the reasoning adopted by the learned trial court. The learned trial court has considered each and every objection and has recorded its own reasoning and there appears no perversity so as to interfere with the impugned order. Unless there is illegality or material irregularity or any perversity in the finding of the learned trial court, this Court would be most reluctant to interfere with such order. Hence, I am of the view that the impugned order is quite correct and legal and hence, it is affirmed.

6. In the result, the present petition stand dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	27.06.2024
Uploading Date	23.07.2024
Transmission Date	N.A.

