

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1155 of 2018

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Premlata Devi W/o Sri Lal Prasad Singh, Resident of Village- Nado, P.S.
-Sour Bazar, District- Saharsa. At Present Resident of Mohalla- Radha
Krishna Nagar, Ward No. 08/12, P.S. and District- Saharsa

... .. Petitioner

Versus

1. Dr. Swatantra Kumar Singh S/o Late Dashrath Prasad Singh
2. Smt. Pratibha Singh W/o Dr. Swatantra Kumar Singh Both 1 and 2 Resident
of Mohalla- Radha Krishna Nagar, Ward no.08/12, Simraha, Saharsa, P.S.
and Dist. Saharsa.
3. Mithilesh Kumar Singh
4. Naresh Kumar Singh
5. Rana Ramesh Kumar Singh All 3 to 5 Sons of Raj Ballabh Singh. All 3 to 5
Resident of Mohalla- Radha Krishna Nagar, Ward no.08/12, Simraha,
Saharsa, P.S. and District-Saharsa.
6. Sri Jitendra Narayan Singh S/o Late Bhogendra Prasad Singh, Resident of
Village Mahua, P.S. - Ghailadh, District- Madhepura.

... .. Respondents

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Appearance :

For the Petitioner/s :	Mr. Arbind Kumar Singh, Advocate
For the Respondent No.2:	Mr. Abhinav Alok, Advocate
	Mr. Priyajee Pandey, Advocate
For the Resp. Nos. 3-5 :	Mr. Hritu Raj, Advocate
	Mr. Sanjeev Kumar, Advocate
	Mr. Aashish Kumar Sinha, Advocate
	Ms. Preeti, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 23-01-2024

The instant Civil Misc. Petition has been filed by the
petitioner under Article 227 of the Constitution of India for
setting aside the order dated 19th June, 2018 passed in Title Suit
No. 287 of 2014 by learned Sub. Judge-IV, Saharsa whereby and
whereunder the learned trial court rejected the petition dated
22.12.2017 filed by the petitioner for appointment of Survey



Knowing Pleader Commissioner.

02. The facts of the case as it appears from the record are as follows:-

(i) The respondents-1st set are plaintiffs in Title Suit No. 287 of 2014 and the petitioner is the defendant no.1 before the learned trial court. In Title Suit No. 287 of 2014, the plaintiffs sought for the following relief(s):-

(I) That it may kindly be inquired into and declared that the suit land pertains to the Rasta of the plaintiffs and they have got sufficient easementary rights over it.

(II) That the same way it may also be declared that obstructions raised over the suit land by the defendants are totally illegal and unlawful and they have not acquired any right or title over it by its forceful and illegal occupation.

(III) That the defendants be ordered by issuing a decree to this effect to remove the obstruction raised by them over the suit land and give its empty possession to the plaintiffs.

(IV) That in case if the defendants do not remove their illegal obstruction from over the suit land by their own they may be made to vacate it by the process of court and the plaintiffs be made to sit in possession of it.

(V) That taking into account the gravamen of the situation hearing of the case may be held on day to day basis and by passing a decree of permanents injunction the defendants may permanently be restrained from going over the suit land.

(VI) That as an interim measure the defendants may further be restrained by



passing an order of injunction to not improve or consolidate their illegal occupation and change physical features of the suit land in any manner.

(VII) That any other or further equitable relief for which the plaintiffs are found entitled may kindly be granted to them.”

(ii) Both the plaintiffs and defendants are purchasers from same vendor, one Narayan Sah. Plaintiff/respondent no. 2 purchased 5 *katha* of land in the year 1972 in old *khata* no. 53, old *khesra* no. 357 and old *khata* no. 50, old *khesra* no. 360. The said Narayan Sah also gave the plaintiff/respondents 10 *dhurs* of land for *rasta* (motorable road). But, in the sale-deed the vendor did not mention about the *rasta* and subsequently, after two years, sold 3 *katha* land to the defendant/petitioner-Premlata Devi in the plot no. 347 leaving the passage of the plaintiffs intact. However, while describing the boundary in the sale deed of defendant no.1/petitioner, instead of specifically showing passage, i.e., *rasta* of the plaintiffs, the vendor mentioned about his land in the northern side of the boundary. It appears from the plaint that the plaintiffs got the map of their house passed from the municipality in the year 1989 and even in the map *rasta* given by the vendor in the East has been shown. The plaintiffs have been using this passage continuously and have submitted



that it was only egress to the main road from their house. The plaintiffs further stated that after 32 years of continuous use, in the month of March, 2004, while the plaintiffs were away to their native place, the defendant-1st set raised a wall and also sunk a tube-well in the passage and blocked the only path of the plaintiffs. The plaintiffs moved before the SDM for removal of illegal blockade and a proceeding under Section 147 of Cr.P.C. was initiated vide order dated 06.07.2004, which was challenged by the petitioner/defendant by filing Criminal Revision No. 274 of 2004. The said criminal revision was dismissed by the learned Fast Track Court-VI, Saharsa which held the order initiating proceeding under Section 147 Cr.P.C. to be legal and valid and the order of the learned Fast Track Court-VI, Saharsa was not interfered by the High Court and it dismissed the Criminal Misc. 42739 of 2006 vide its order dated 05.05.2009 filed against order of Criminal Revision No. 274 of 2004. Subsequently, the proceeding before the SDM, which was continuing after Criminal Revision No. 274 of 2004, ended in dropping the proceedings after 07 years of its initiation in Misc. Case No. 484 of 2004 in 2011. The plaintiffs/respondents filed Criminal Revision No. 1377 of 2011 in the High Court which was decided against them and against the order of this Court, the



plaintiffs moved before the Hon'ble Supreme Court by filing SLA (Criminal) No. 18804 of 2014 and vide order dated 26.09.2014, the Hon'ble Supreme Court disposed of the SLA (Criminal) with observation to institute a civil suit claiming easementary rights with a prayer for ad-interim relief and thus, the plaintiffs filed the Title Suit No. 287 of 2014 for easementary and other consequential reliefs.

(iii) The defendant/petitioner joined the proceedings in the suit opposing their contention by filing his written statement. The issues were framed and the matter proceeded for recording of evidence of the plaintiffs. While the evidence of the plaintiffs was being recorded, the defendant no. 1/petitioner moved an application dated 22.12.2017 before the learned trial court for appointment of Survey Knowing Pleader Commissioner for examination of the plots of the plaintiffs as well as one Janaknandani Devi contiguous to the plot of plaintiffs in the light of deposition of plaintiff/respondent no. 1 denying the suggestion that the land purchased in the name of plaintiff/respondent no. 2 was vacant except a house in the northern portion and also with regard to denial about a residential house existing on the land of Janaknandani Devi and its southern portion being vacant land. The defendant/petitioner



claimed that on the land of plaintiff/respondent no. 2, there was only garage on the northern side and rest of the land was vacant and a residential house was existed on the land of Janaknandani on the northern side and its southern portion was vacant.

(iv) The plaintiffs filed their rejoinder to the application filed by the defendant no./petitioner submitting that the plaintiff/respondent no. 2 and Janaknandani are own sister and both of them purchased 05 *katha* land each and by their mutual arrangement and consent, the plaintiff/respondent no. 2 constructed her house on whole 10 *katha* of land from West to North and also constructed a clinic and the plaintiffs are in possession of all of 10 *katha* land. The plaintiffs/respondents further submitted that the total 10 *katha* of land was purchased by the plaintiff/respondent no.2 and her sister Janaknandani Devi by sale deeds in 1972 and the defendant no.1/petitioner has no concern with the land of Janaknandani Devi. The defendant/petitioner cannot demand any report on the lands of Janaknandani Devi or plaintiff/respondent no. 2 as the same are not in dispute and Janaknandani Devi is not a party to the suit.

(v) The learned trial court after considering the submission of both sides, rejected the petition dated 22.12.2017 filed on behalf the petitioner/defendant no.1.



03. Learned counsel for the petitioner submitted that the order of the learned trial court suffers from material irregularity as the learned trial court has not considered whether it was not necessary in the interest of justice to get physical verification report with regard to dispute raised in the case. It has also not considered whether the physical verification as requested by the defendant/petitioner is necessary for fair adjudication and to decide the real controversy in the case. Learned counsel further submitted that the learned trial court went on the premises that the report being sought on the land is not the suit property but it missed the point that the plaintiffs themselves admitted that entire 10 *katha* land came into possession of the plaintiff/respondent no. 2 and the petition of the defendant/petitioner was for inspection and report with regard to aforesaid land and the passage attached to the said land. Thus, the learned trial court erred while holding that the petition filed by the defendant/petitioner is not related to the suit land and it would not be helpful to elucidate any matter in dispute between the parties. The learned trial court also did not take into consideration the fact that the plaintiff/respondent no.1 has given false and contradictory statement in his evidence with regard to construction of house and free space. Learned counsel



further submitted that a false statement can be verified only by spot verification. Moreover, it is case filed for easementary rights and it would be necessary to take into consideration the existing condition of the plots in possession of the plaintiffs.

04. Learned counsel appearing on behalf of the respondents-1st party vehemently opposed the submission made on behalf of petitioner. Learned counsel for the respondents-1st party submitted that obviously, the prayer for appointment of Survey Knowing Pleader Commissioner is not for suit land. The evidence of plaintiffs is being recorded in the suit and this is not the stage to obtain the report of Survey Knowing Pleader Commissioner. If the learned trial court may harbour any doubt, it can ask for report of Survey Knowing Pleader Commissioner after the evidence(s) of both sides are closed. The learned counsel reiterated the submission made in the rejoinder by the plaintiffs/respondents to the application filed by the defendant no.1/petitioner. Learned counsel further submitted that defendant has not taken any defence in his written statement about there being no house near the disputed land. Moreover, calling for physical feature of measurement report of any other land apart from suit land is simply not permissible as the same is not the subject matter of dispute. Since, it is a case of



easementary right over the right of way between the parties, except for the suit land other land cannot be the subject matter of the suit.

05. I have given my thoughtful consideration to the facts of the case and the submission made on behalf of the parties. Without going into details of the case, it is pertinent to note here that the matter is at the stage of evidence of plaintiffs/respondents. When the evidence of plaintiffs/respondents is being recorded, the defendant/petitioner cannot make prayer midway that a Survey Knowing Pleader Commissioner be appointed. The said prayer could be considered only after the evidence of the plaintiffs has been closed or if the court requires, after recording of the evidence(s) of both the parties. So, the claim of the petitioner/defendant no. 1 is premature. Hence, without going into the merits of the case, the petition is dismissed as being premature.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
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