

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1257 of 2016

1. Ram Krishna Yadav, son of Late Gosai Yadav
2. Sukumar Yadav
3. Shiv Kumar Yadav,
Both sons of Late Chandeshwari Yadav
4. Arjun Yadav, son of Late Janeshwari Yadav
5. Most. Sugia Devi, wife of Late Rameshwar Yadav
All are residents of Village Tuniyahi, P.O. Tuniyahi, P.S. and District-
Madhepura.

... .. Petitioner/s

Versus

1. Jaichand Yadav
2. Ashok Yadav,
both sons of Late Mahasundari Devi and Feku Mandal Both residents of
Village Sakarpura, P.O.- Gridhaila, P.S. and District- Madhepura.
- 3.1. Bindeshwari Yadav Husband of late Durga Devi
- 3.2. Kishore Yadav
- 3.3. Ramanand Yadav
- 3.4. Sadanand Yadav
- 3.5. Dayanand Yadav
- 3.6. Kalanand Yadav
All sons of late Durga Devi All residents of Village Sakhuwa, P.O. Pastpar,
P.S. Sourbazar, District- Saharsa.
4. Prithvi Devi wife of Late Ramdhani Yadav, daughter of Late Musafir
Mandal resident of Rajajan, P.O.- Mansi, P.S.- Mansi, District- Khagaria.
- 5.1. Ved Prakash Yadav@ Jai Prakash Yadav
- 5.2. Sadanand Yadav
- 5.3. Jawahar Yadav
All Sons of late Ramchandra Yadav Resident of Village Tuniyahi, P.O.
Tuniyahi, District- Madhepura at Present resident of ward No. 3, P.O.
tuniyahi P.S. and District- Madhepura.
6. Mahendra Yadav sons of Late Kunjilal Yadav
7. Anitya Devi, wife of Nand Kishore Yadav
All resident of Village- Tuniyahi, P.O.- Tuniyahi, District- Madhepura.
8. Akhilesh Yadav
9. Shiban Yadav
both sons of Late Rajendra Yadav Both residents of Village and P.O.-
Tuniyahi, P.S. and District- Madhepura.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Jitendra Kishore Verma, Advocate
Mr. Ravi Raj, Advocate
Mr. Abhishek Kumar Srivastava, Advocate
Mr. Yash Roohan, Advocate
Mr. Shreyash Goyal, Advocate
Ms. Sweta, Advocate
Mr. Abhay Roy, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
Date : 19-06-2024

Heard learned counsel for the petitioners. However, no one is present on behalf of the respondents despite valid service of notice.

2. The present petition has been filed by the petitioners for setting aside the orders dated 17.02.2014 and 29.04.2016 passed in Title Suit No. 203 of 2010 by the learned Sub Judge-1st, Madhepura whereby and whereunder the learned trial court dismissed the amendment petition filed on behalf of the petitioners.

3. The learned counsel for the petitioners submits that the petitioners are plaintiffs before the learned trial court and in Title Suit No.203 of 2010, the petitioners/plaintiffs filed an application on 24.10.2013 for making certain amendments in the plaint under the provisions of Order 6 Rule 17 of the Code of Civil Procedure for adding paragraph 16(A) and 20 (ii) (A) in the plaint. Need for amendment arose as after rejection of injunction petition



by the learned trial court, the defendants/respondents became more desperate and they forcibly dispossessed the plaintiffs from the suit land and put fence on it. However, the learned trial court did not pass any orders on the petition dated 24.10.2013 and just made an observation in its order dated 17.02.2014 that bringing all physical features of the suit land on record was necessary and, under these circumstances, before passing any order on the amendment petition moved by the plaintiffs/petitioners, the plaintiffs were directed to take necessary steps for bringing on record the physical features of the suit land so that the orders could be passed on the amendment petition. The learned counsel further submits that thereafter the petitioners/plaintiffs filed another application on 23.01.2016 for amendment in the plaint submitting that no specific order has been passed on their earlier application and the plaintiffs have already stated every details in the plaint about the suit land and also filed trace map and report of *Amin* along with the plaint. The learned counsel further submits that there was no requirement of moving any other application for bringing on record the physical features of the suit property. The learned counsel further submits that however the learned trial court, under some misconception, dismissed the second application observing that on similar application, the trial court earlier passed an order on



17.02.2014 and the said order was neither challenged nor reviewed. The learned counsel further submits that the learned trial court did not appreciate the fact that earlier application was not disposed of on merits and, in fact, no orders have been passed with regard to amendment and in this manner, the petition was still pending. Moreover, there was no requirement for further bringing physical features of suit property on record as in this regard sufficient material was already available on record, the petitioners moved before the learned trial court by filing second application dated 23.01.2016 stating all these facts. However, the learned trial court without appreciating the facts dismissed the petition. The learned counsel relied on the decision of this Court in the case of ***Jayanti Kuer & Ors. v. Laxmichand Upadhyay & Ors.*** reported in ***(2000) 1 PLJR 231*** on the proposition that Pleader Commissioner will not be in a position to determine the question of possession of the property when there is dispute between the parties over the same. So, the learned trial court committed an error on record while rejecting the petition dated 23.01.2016 vide impugned order dated 29.04.2016. Thus, both the orders dated 17.02.2014 and 29.04.2016 are not sustainable and the same be set aside.

4. Having regard to the facts and circumstances and submission made on behalf of the petitioners, I find some merit in



the contention of learned counsel for the petitioners that the learned trial court while passing the order dated 29.04.2016 ought to have taken into consideration the fact that no orders on earlier application filed by the plaintiffs for amendment have been passed and as the petitioners/plaintiffs have explained the fact that there was no requirement for further bringing on record the physical features of the disputed land and the plaintiffs placed their reliance on the material already available on record which was sufficient in their eyes regarding the description of the physical features of the suit property, the learned trial court ought to have looked into the contention of the plaintiffs. So far as issue of possession is concerned, it is settled law that the parties have to prove the same through their evidence and they cannot take the help of Pleader Commissioner to gather the evidence on this point. If the learned trial court wanted to have clarification with the help of Pleader Commissioner on this point, this approach was completely misconceived. While disposing of the application dated 23.01.2016 vide order dated 29.04.2016, the learned trial court merely took into consideration the orders passed on the earlier application without considering the fact that it was not a disposal on merits rather the disposal was conditional to certain compliance by the plaintiffs.



5. Under the circumstances, I do not think that both the orders dated 17.02.2014 and 29.04.2016 could be sustained and, accordingly, both orders are set aside. The learned trial court is directed to pass the orders afresh on the petition dated 23.01.2016 within a fortnight from the date of receipt/production of a copy of this order.

6. With the aforesaid observations and directions, the instant petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.06.2024
Transmission Date	NA

