

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.596 of 2017

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Sheovendra Kumar Yadav @ Shovendra Prasad Yadav Son of late Chandan Prasad Yadav Resident of Village- Sishya Barhi, P.S.- Phulparas District- Madhubani, Presently residing at Village Purani Pokhari, Soni Talkies Jhanjharpur, P.S. Jhanjharpur, District- Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Badri Prasad Chaudhary Son of late Dwarika Prasad Chaudhary
3. Arun Kumar Chaudhary Son of Badri Prasad Chaudhary
4. Deepak Kumar Chaudhary Son of Badri Prasad All are resident of Village Chakiya Bazar, Chakiya Sahebganj Road, P.S.Chakiya District East Champaran Presently residing at of Behat tola Nawatola, P.S. Jhanjharpur Railway Station, P.S. Madhepur, District Darbhanga, Present Distt Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Gagan Deo Yadav, Advocate Mr. Vinod Kumar, Advocate
For the Respondent no. 1	: Mr. Manish Kumar (A.C. To AAG 6)
For the Respondent nos. 2 to 4	: Mr. S. D. Sanjay, Sr. Advocate Mr. Mohit Agrawal, Advocate Mr. Lokesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

8 29-04-2024 Heard learned counsel appearing for the petitioner, learned counsel appearing for respondent no. 1 and respondent nos. 2, 3 & 4.

02. Learned counsel appearing for the petitioner submits that the petitioner is the defendant before the learned trial court and respondent nos. 2 to 4 are plaintiffs and the petitioner has filed the instant application under Article 227 of the Constitution of India against the order dated 12th of January,

2017 passed by learned Sub-Judge-III, Jhanjharpur in Title Suit No. 40 of 2004/61 of 2015 whereby and whereunder the learned Sub-Judge-III, Jhanjharpur has allowed the application of 14th May, 2013 filed on behalf of the plaintiff/respondent no. 2 to 4 to issue dasti summons to Survey Knowing Pleader Commissioner. Learned counsel for the petitioner further submits that the impugned order has been passed without considering the objection raised by the petitioner. The learned counsel further submits that the impugned order is in teeth of the directions contained in the order dated 01.10.2008 passed by the learned Single Judge in M.A. No. 42 of 2007 for early disposal of the case.

03. Perusal of record shows previously the matter travelled to this Court and order dated 01st of October, 2008 was passed in M.A. No. 42 of 2007, whereby the learned Single Judge disposed of the Miscellaneous Appeal with a direction to the learned Court below to dispose of the suit preferably within shortest possible time by avoiding all sorts of adjournments and both sides were directed to render their due assistance for early disposal of the suit.

04. Having regard to the earlier orders of this Court and considering the prayer in the present miscellaneous petition,

I think so much time has been wasted by the parties when an innocuous prayer has been made for issuance of dasti summons to the Survey Knowing Pleader Commissioner who submitted a report of scientific measurement on 20th of March, 2010. Both the parties are at fault as application of the plaintiffs has been filed on 14.05.2013, i.e., after three years of submission of report and rejoinder to it was filed on 29.05.2013 and thereafter the matter was dragged on till 12.01.2017, when the impugned order was passed.

05. If the parties were alive to the situation, the plaintiff ought to have called the Survey Knowing Pleader Commissioner to be examined at the earliest after submission of report when the examination of the plaintiffs' witnesses had been taking place. On the other hand the defendants who is petitioner here could also be faulted on the same ground that if he could have been vigilant, the matter could have been disposed of much earlier. Moreover the petitioner has failed to show any valid ground except submitting that the impugned order is in teeth of orders of this Court passed in M.A. No. 42 of 2007 dated 01.10.2008 and did not assail the order on merits.

06. Without going into the merits of this case, the learned trial court is directed to proceed with the matter and ,

examine the Survey Knowing Pleader Commissioner by fixing a date giving ample opportunity to the parties and dispose of the matter before it within next nine months considering the antiquity of the Title Suit no. 40 of 2004.

07. The parties are directed to fully cooperate in the disposal of the Title Suit No. 40 of 2004 and learned Trial Court is directed to keep a strict vigil and is further directed not to allow any unnecessary adjournment and the demand of adjournment on flimsy grounds should be strictly dealt with.

08. With the aforesaid direction, the present petition stands disposed of.

(Arun Kumar Jha, J)

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