

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.2062 of 2017

1. Lekha Yadav, Son of Late Dhondha Yadav,
2. Tarkeshwar Yadav, Son of Lekha Yadav,
3. Beni Yadav, Son of Lekha Yadav, All Resident of Village- Taridih Bhagalpur, P.S.- Bodh Gaya, District- Gaya.

... .. Petitioner/s

Versus

1. Krishana Ballabh Prasad Sharma, Son of Late Jangi Prasad Singh,
2. Manoj Kumar, Son of Krishna Ballabh Prasad Sharma.
3. Sanjay Kumar, Son of Krishna Ballabh Prasad Sharma.
4. Smt. Sangeeta Kumari, Wife of Sanjay Kumar
No. 6 to 9 R/o J.P.S. Inclave Newari House Prithvishil Market, Kadampura, Patna-3, District- Patna.
5. Rajeev Nandan, Son of Bir Mani Sharma, R/o Mohalla- Red House Compound, P.S. Rampur, District- Gaya.
6. Smt. Anita Kumari, Wife of Bhola Bhai, Both R/o Mohalla- Nutan Nagar, Beldari Tola, P.S. Civil Lines, District- Gaya.
7. Mithilesh Kumar Singh, Son of Pramod Singh, R/o Village- Kendui, P.S.- Magadh Medical College, Gaya, District- Gaya.
8. Smt. Madhuri Devi, Wife of Dr. Triveni Sharma, R/o Mohalla- Sagar Path Nutan Nagar, Gaya, P.S. Civil Lines, District- Gaya.
9. Smt. Krishna Devi, Wife of Vinay Kumar, R/o Village- Sagarpur, P.S. Makhdumpur, District- Jehanabad.
10. Dharmendra Kumar Yadav, Son of Nageshwar Yadav, R/o Village- Neema Tola, Din Dayal Nagar, P.S. M.M.C.H. Gaya.
11. Abhishek Ray, Son of Roy Madan Krishor, R/o 258, Platinum Inclave Section 18 Pocket-1, Rohini, P.S.- Badali, New Delhi.
12. Pramod Kumar, Son of Awadhesh Sharma, R/o Mohalla- Barki, P.S.- Delha, District- Gaya, Power of Attorney holder on behalf of Krishna Prasad and Jagdish Prasad Son of Late Chamari Kahar, R/o Village- Mastipur, R.S.- Bodh -Gaya, District- Gaya, Vide register deed no. 428, dated 15.05.2010.
13. Arun Singh, Son of Jagdish Singh, R/o Village- New Taridin, P.S. Bodh-Gaya, District- Gaya a power of Attorney holder of Most Bhagwati Devi Wife of Late Raghu Singh and daughter of Late Chamari Kahar vide register deed no. 897 dated 21.06.2011.
14. Uday Kumar, Son of Sri Dwarika Prasad R/o village and P.O.- Paibigha, P.S.- Belaganj, District- Gaya.
15. Sanjay Yadav, Son of Tarkeshwar Yadav, resident of Village- Bhagalpur, P.S.- Bodh-Gaya, District- Gaya.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Ujjawal Kumar Singh, Advocate
Mr. Arvind Kumar Sinha, Advocate
For the Respondent/s : Mr.

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

Date : 31-07-2025

Heard learned counsel for the petitioner and I intend to dispose of the instant petition at the stage of admission itself.

2. The petitioner is aggrieved by the order dated 01.11.2017 passed by the learned Sub Judge-1, Gaya in Title Suit No. 45 of 2015 whereby and whereunder the application filed by the petitioners under Order 26 Rule 9 of the Code of Civil Procedure has been rejected.

3. The learned counsel for the petitioners submits that the impugned order has been passed in a mechanical manner as the application was filed by the petitioners, who are defendants before the learned trial court, for appointment of Pleader Commissioner to ascertain the possession of the suit property as both the parties claim possession.

4. I think the claim of the petitioners is not sustainable for the simple reason that the duty of Pleader Commissioner is not to collect the evidence on behalf of the parties. In the case of *Padam Sen and Another Vs. The State of U.P.* reported in *AIR 1961 SC 218*, the three Judge Bench of the Hon'ble Supreme Court has held that it is not the business of the



Court to collect evidence in favour of one party.

5. Further, if the learned trial court has taken into consideration this fact and held that title and possession are to be decided by the court on the basis of evidence adduced by the parties and the court cannot depute a Pleader Commissioner to make local inspection of the suit land and to submit a report as to who is in possession of the suit land.

6. In the light of discussion made here-in-above, I have no hesitation in holding that the learned trial court has not committed any illegality or irregularity and there appears no error of jurisdiction so as to interfere with the impugned order and hence, the impugned order dated 01.11.2017 is affirmed.

7. Accordingly, finding no merit in the present petition, the same is dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2025
Transmission Date	NA

