

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.662 of 2025

1. Awadhesh Kumar Son of Late Ragho Singh, Resident of village - Saharsa P.S. Goh now Upahara Distt. - Aurangabad (Gaya), At Present Resident of Mohalla -Jai Prakash Nagar, House of Late Kedar Nath Sharma, P.S - Jakkanpur, Distt. - Patna.
2. Suresh Prasad Singh, Son of Late Ragho Singh, Resident of village - Saharsa P.S. Goh now Upahara Distt. - Aurangabad (Gaya), At Present Resident of Mohalla -Jai Prakash Nagar, House of Late Kedar Nath Sharma, P.S - Jakkanpur, Distt. - Patna.
3. Ramesh Kumar, Son of Late Kedar Nath Sharma, Resident of village - Saharsa P.S. Goh now Upahara Distt. - Aurangabad (Gaya), At Present Resident of Mohalla -Jai Prakash Nagar, House of Late Kedar Nath Sharma, P.S - Jakkanpur, Distt. - Patna.
4. Brajesh Kumar, Son of Late Kedar Nath Sharma, Resident of village - Saharsa P.S. Goh now Upahara Distt. - Aurangabad (Gaya), At Present Resident of Mohalla -Jai Prakash Nagar, House of Late Kedar Nath Sharma, P.S - Jakkanpur, Distt. - Patna.
5. Girijesh Kumar, Son of Late Kedar Nath Sharma, Resident of village - Saharsa P.S. Goh now Upahara Distt. - Aurangabad (Gaya), At Present Resident of Mohalla -Jai Prakash Nagar, House of Late Kedar Nath Sharma, P.S - Jakkanpur, Distt. - Patna.
6. Madhu Kumari, D/o Kedar Nath Sharma, Resident of village - Saharsa P.S. Goh now Upahara Distt. - Aurangabad (Gaya), At Present Resident of Mohalla -Jai Prakash Nagar, House of Late Kedar Nath Sharma, P.S - Jakkanpur, Distt. - Patna.

... .. Petitioner/s

Versus

1. Most. Manju Devi, W/o - Late Gaya Nath Kumar, Resident of village -Dumri, P.S. - Simari, Distt. - Bhojpur At Present Resident of Mohalla -Jai Prakash Nagar, P.S - Jakkanpur, Distt. - Patna.
2. Ashutosh Kumar, Son of Late Gaya Nath Kumar, Resident of village -Dumri, P.S. - Simari, Distt. - Bhojpur At Present Resident of Mohalla -Jai Prakash Nagar, P.S - Jakkanpur, Distt. - Patna.
3. Sunil Kumar, Son of Late Gaya Nath Kumar, Resident of village -Dumri, P.S. - Simari, Distt. - Bhojpur At Present Resident of Mohalla -Jai Prakash Nagar, P.S - Jakkanpur, Distt. - Patna.
4. Brajesh Kumar, Son of Late Gaya Nath Kumar, Resident of village -Dumri, P.S. - Simari, Distt. - Bhojpur At Present Resident of Mohalla -Jai Prakash Nagar, P.S - Jakkanpur, Distt. - Patna.

... .. Respondent/s

with

CIVIL MISCELLANEOUS JURISDICTION No. 404 of 2024



1. Most Manju Devi Wife of Late Gaya Nath Kumar, residence of Mohalla Jai Parakash Nagar, P.S.-Jakanpur, District-Patna.
2. Ashutosh Kumar son of Late Gaya Nath Kumar, residence of Mohalla Jai Parakash Nagar, P.S.-Jakanpur, District-Patna.
3. Sunil Kumar, son of Late Gaya Nath Thakur, residence of Mohalla Jai Parakash Nagar, P.S.-Jakanpur, District-Patna.
4. Brajesh Kumar, son of Late Gaya Nath Kumar, residence of Mohalla Jai Parakash Nagar, P.S.-Jakanpur, District-Patna.

... .. Petitioner/s

Versus

1. Awadhesh Kumar son of Late Ragho Singh, resident of Jai Prakash Nagar, P.S.-Jakanpur, District-Patna.
2. Suresh Prasad Singh, son of Late Ragho Singh, resident of Jai Prakash Nagar, P.S.-Jakanpur, District-Patna.
3. Kedar Nath Sharma, Son of Late Ram Sewak Sharma, resident of Jai Prakash Nagar, P.S.-Jakanpur, District-Patna.

... .. Respondent/s

Appearance :

(In CIVIL MISCELLANEOUS JURISDICTION No. 662 of 2025)

For the Petitioner/s : Mr.Mukesh Kumar No.1, Advocate

For the Respondent/s : Mrs. Archana Sinha, Senior Advocate

Ms. Richa Rajiv Singh, Advocate

(In CIVIL MISCELLANEOUS JURISDICTION No. 404 of 2024)

For the Petitioner/s : Mr.Archana Sinha @ Archana Shahi, Senior Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 25-07-2025

The record taken up on mentioning being made on behalf of the petitioners.

2. Heard learned counsel appearing on behalf of the petitioners and learned senior counsel appearing on behalf of the respondents.

In Civil Misc. No.662 of 2025

3. The petitioners are aggrieved by the order dated



27.03.2025 passed by the learned Civil Judge (Junior Division)-III, Patna Sadar in Title Suit No.15 of 1987 whereby and whereunder the learned trial court rejected the application dated 03.05.1988 filed on behalf of the petitioners for appointment of Advocate Commissioner.

In Civil Misc. No.404 of 2024

4. The petitioners have challenged the order dated 01.12.2023 passed by the learned Civil Judge (Junior Division)-III, Patna Sadar in Title Suit No.15 of 1987 whereby and whereunder the learned trial court rejected the application dated 11.05.2023 filed on behalf of the petitioners under Order 26 Rule 10A of the Code of Civil Procedure for appointment of Survey Knowing Pleader Commissioner. Further, the petitioners are aggrieved by the order dated 05.03.2024 passed by the same court in the same title suit whereby and whereunder the learned trial court rejected the application dated 22.12.2023 filed by the petitioners under Order 47 Rule 1 of the Code of Civil Procedure.

In Civil Misc. Nos. 662 of 2025 & 404 of 2024

5. It has been jointly prayed by the parties that they have no objection for appointment of Survey Knowing Pleader Commissioner/Pleader Commissioner, if the same helps the



court in deciding the question before it for adjudication of the dispute between the parties.

6. Shorn of unnecessary details, the facts of the case are that the petitioners of Civil Misc. No.404/2024 are plaintiffs before the learned trial court and the petitioners are respondents in Civil Misc. No. 662/2025. On the other hand, the defendants of Title Suit No. 15/1987 are respondents in Civil Misc. No.404/2024 and they are petitioners of Civil Misc. No.662/2025 in which respondents are the plaintiffs. For the sake of convenience, the parties would be referred with their status before the learned trial court as plaintiffs or defendants.

7. The plaintiffs have filed the title suit for declaration of their title over the suit land of Plot No. 24, Khata No.16, Tauzi No.5204, Area 8' x 39.9" northern portion of plaintiffs' Plot No.24 of village-Jai Prakash Nagar, Jakkanpur, Patna. The plaintiffs further sought declaration that defendants have no right of passage in the suit land. The plaintiffs as well as defendants purchased 2 katha land of Plot No. 24 by different sale deeds dated 29.03.1974. The sale deed mentions 2 katha land of petitioners is east to west 39'x 9" and north to south 66'x3". On the other hand, the sale deed of defendants mentions the said 2 Katha land is east to west 41' x 9" and north to south



66' x 3". The defendants claim that at their request, exchange of lands between defendants and the plaintiffs was made and by the said oral exchange, plaintiff no.1 agreed to exchange a portion of his land in extreme north for *Rasta* of the defendants and, as such, in April, 1974, the defendants gave the eastern portion of their land measuring 5' x 3" east to west and 60' long north to south for the *Rasta* of the defendants. The plaintiffs claim that in the light of case of the parties, scientific measurement of lands of both the parties is most essential for right decision of the suit. Similarly the defendants claim that passage of 8 feet which is being used for *Rasta* by the defendants is only way of entry and exit of the house of the defendants, though the plaintiffs claim that defendants have alternative way to entry and exit. On this ground, the defendants filed a petition on 3.05.1988 for appointment of Advocate Commissioner for spot verification as to whether alternative way of entry and exit for residential house of the defendants is available or not.

8. Since both the parties agree to the appointment of Survey Knowing Pleader Commissioner/Advocate Commissioner, without going into the merits of the respective case of the parties and without testing the correctness of the



impugned orders, the matter is remanded to the learned trial court and the parties are directed to make their prayer for appointment of Survey Knowing Pleader Commissioner/ Advocate Commissioner on mutually agreed points for which writ could be issued to the learned Commissioner by the learned trial court.

9. Accordingly, both the petitions are disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.07.2025
Transmission Date	NA

