

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.499 of 2023

1. Sagir Ahmad @ Sagir Ahmad Mian, Son of Late Manjur Alam Mian @Manjur Alam, Resident of village - Baila, P.O. - Baila, P.S. - Ramgarhwa, District- East Champaran.
2. Noor Hasan @ Noor Hasan Mian, Son of Late Manjur Alam Mian, Resident of village - Baila, P.O. - Baila, P.S. - Ramgarhwa, District- East Champaran.
3. Md. Murad Mian @ Md. Murad, Son of Late Manjur Alam Mian, Resident of village - Baila, P.O. - Baila, P.S. - Ramgarhwa, District- East Champaran.

... .. Petitioner/s

Versus

1. Abid Hussain, Son of Late Hafiz Noor Mohammad, Resident of Village - Baila, P.O. - Baila, P.S. - Rangralwa, District - East Champaran.
2. Md. Kasim, Son of Late Jahir Hussain, Resident of Village - Baila, P.O. - Baila, P.S. - Rangralwa, District - East Champaran.
3. Taiyab Mian, Son of Late Manzoor Mian, Resident of Village - Baila, P.O. - Baila, P.S. - Rangralwa, District - East Champaran.
4. Taiyab Hussain, Son of Late Aashik Hussain, Resident of Village - Baila, P.O. - Baila, P.S. - Rangralwa, District - East Champaran.
5. Tahir Hussain, Son of Late Aashik Hussain, Resident of Village - Baila, P.O. - Baila, P.S. - Rangralwa, District - East Champaran.
6. Abid Hussain, Son of Late Aashik Hussain, Resident of Village - Baila, P.O. - Baila, P.S. - Rangralwa, District - East Champaran.
7. Jahid Hussain, Son of Late Aashik Hussain, Resident of Village - Baila, P.O. - Baila, P.S. - Rangralwa, District - East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh, Advocate
For the Respondent/s : Mr. Arghesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL ORDER

6 04-11-2025 Heard learned counsel for the petitioners and learned counsel for the respondents.

2. This Civil Misc. Application has been filed against the order dated 16.03.2023 passed by the learned Sub-Judge-XI, East Champaran, Motihari in T.S. No. 400 of 2018 whereby and



whereunder the petition dated 14.07.2022 filed on behalf of the petitioners (defendant no. 2 to 4 in the learned court below) against the report filed by the learned Survey Knowing Advocate Commissioner has been rejected with observation that the report shall be appreciated after taking evidences as adduced by both the parties ignoring the fact that the learned Advocate Commissioner has not served notice on the counsel for the petitioners or the petitioners and his report was illegal filed without measurement and spot verification and for any other relief/reliefs to which the petitioners are entitled in the facts and circumstances of this case.

3. Learned counsel for the petitioners submits that the present petitioners are defendants in the Title Suit No. 400 of 2018 which was filed by the plaintiff-respondent 1st Set. The main thrust of the argument on behalf of the learned counsel for the petitioner is that they were not informed by learned Survey Knowing Advocate Commissioner before scientific measurement of suit property and hence, the entire report of Survey Knowing Pleader Commissioner is vitiated and it is fit to be annulled.

4. Learned counsel for the plaintiff-respondent submits that a notice was duly served upon the defendants-



petitioners by the Survey Knowing Pleader Commissioner but he refused to accept the notice sent by the Survey Knowing Pleader Commissioner. He further submits that before going through the impugned order it is essential to peruse the Survey Knowing Pleader Commissioner's report in which it is mentioned that

"Having received the writ on 11.01.2022 by the learned court and after perusing the same, I served notices upon the learned Advocate of both parties on 13.01.2022 fixing the date for measurement and investigation of suit plot on 23.01.2022 at 10 a.m. but Advocate of Defendant first set does not received.

On the fixed date and time I went at the spot situated at Mauja Bela P.S. Ramgarhawa District East Champaran, where I found both the parties and other local villagers."

5. The said Survey Knowing Pleader Commissioner has been examined by the court on 29.08.2022 in which in paragraph 19 of cross-examination he has deposed that on 13.01.2022 he has sent notices to the advocate of both the parties and in paragraph 20 he has specifically deposed that when learned Advocate for the defendant nos. 2 to 4 did not take the notice then he did not inform defendant nos. 2 to 4. Nothing has come during the course of cross-examination which could show that the said learned Advocate Commissioner did not serve any notice to the defendants-petitioners neither such



suggestion has been given to the learned Advocate Commissioner regarding non-service of notice to the petitioner. The learned Trial Court has mentioned in the impugned order that:

“However, it is made clear to the parties that the report shall be appreciated after taking up the evidences as adduced by both the parties.”

6. So, it clearly transpires that no any finding has been given by the trial court on the veracity of the aforesaid report of Survey Knowing Pleader Commissioner. It is reserved for final judgment. Hence, there is no illegality and impropriety in the aforesaid impugned order.

7. From the impugned order, it is clear that the learned trial court has not applied its mind on the veracity of the aforesaid report of the Survey Knowing Pleader Commissioner, which could be decided at the time of final judgment.

8. Accordingly, the present Civil Misc. petition stands disposed of.

(S. B. Pd. Singh, J)

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