

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.496 of 2024

1. Meena Devi, Wife of Govind Bhagar @ Govind Prasad Resident of mohalla Dahiyawan Road, Dev Kumar Singh ke Hata, P.S.- Chapra Town, District- Saran.
2. Govind Bhagat @ Govind Prasad, Son of Late Jai Mangal Bhagat @ Vijay Mangal Prasad, Resident of mohalla Dahiyawan Road, Dev Kumar Singh ke Hata, P.S.- Chapra Town, District- Saran.

... .. Petitioner/s

Versus

Gautam Prasad, Son of Late Siroman Thakur, Resident of mohalla Dahiyawan Mission Road, Dev Kumar Singh ka Hata, P.S.- Chapra Town, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Senior Advocate
		Mr. Shivam, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 10-02-2025

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

2. Heard learned senior counsel appearing on behalf of the petitioners and I intend to dispose of instant petition at the stage of admission itself.

3. The petitioners are aggrieved by the order dated 27.03.2024 passed by the learned Additional District Judge-IV, Saran at Chapra in Title Suit No. 2 of 2020 whereby and whereunder the petition filed by the petitioners under Order 26 Rule 10 (A) of the Code of the Civil Procedure (hereinafter referred to as 'the Code') for appointment of Survey Knowing



Pleader Commissioner to give report on the points raised in the petition dated 16.02.2023 has been rejected.

4. The learned senior counsel appearing on behalf of the petitioners submits that one of the important issues involved for just adjudication of the dispute between the plaintiffs and defendant is with regard to identity of the suit land as to whether Municipal Plot Nos. 8011 and 8012 have given rise to Holding No. 372/278 (New) carved out from Holding No. 313 (Old) and even before the previous Holding No. 303 at Mohalla-Dahiyawan, Ward No. 17, Circle No. 16, Chapra Town, District-Saran. The learned senior counsel further submits that in every litigation, it should be the endeavour of the court to come to a just and proper decision. If appointment of Survey Knowing Pleader Commissioner would take towards furtherance of ends of justice and to help the court in arriving to a right conclusion, the same ought to be allowed. Moreover, taking evidence at the appellate stage is not barred under the Code. The learned senior counsel further submits that it is case in which relief of declaration of title has been sought and the learned first appellate court rejected the petition on erroneous consideration. Thus, the learned senior counsel submits that the impugned order be set aside and the petition of the petitioners be allowed.



5. I have given my thoughtful consideration to the submission of learned senior counsel appearing on behalf of the petitioners.

6. Order 26 Rule 10 (A) of the Code reads as under :

“10-A. Commission for scientific investigation.—

(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under Rule 9”.

7. The appointment of Survey Knowing Pleader Commissioner at the appellate stage for identification of property is most uncommon since a duty is cast upon the plaintiff to establish the identity of the suit property as well as his claim with regard to it by his own evidence and the plaintiff or any party could not take the help of the court to gather



evidence on his behalf.

8. 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.

9. Moreover, in the present case, the learned first appellate court in the impugned order has specifically mentioned that in paragraphs 7 & 8 of the memo of appeal, the petitioners/appellants have stated that the land is identifiable with the evidences adduced by the plaintiffs and by moving the application dated 16.02.2023, the plaintiffs/ appellants/ petitioners herein sought for appointment of Pleader Commissioner to identify the land and the same runs counter to the ground taken in the memo of appeal. In any case, it was the duty of the plaintiffs/appellants/petitioners to establish their claim and identity of the land that certain *khata*s were carved out or have been converted into new *khata* which is being claimed by the plaintiffs as suit property. The court should not be made an accessory for gathering the evidence on behalf of the parties.

10. It is trite to reiterate that the power of superintendence under Article 227 of the Constitution has been



bestowed upon the High Courts to keep the subordinate courts within the bounds of their authority and to see that they do not exceed their jurisdiction and do not pass any orders in error of their jurisdiction. But this power is to be exercised sparingly and the order passed by the subordinate courts are not be lightly interfered with unless there is any error of jurisdiction.

11. In the light of discussion made hereinbefore, I do not find the facts disclose any error of jurisdiction and hence, I do not think the learned first appellate court committed any illegality and irregularity while passing the impugned order. Therefore, the impugned order dated 27.03.2024 passed by the learned Additional District Judge-IV, Saran at Chapra in Title Appeal No. 2 of 2020 is affirmed.

12. Accordingly, the instant civil miscellaneous petition stands dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.02.2025
Transmission Date	NA

