

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.623 of 2017

- 1.1. Rajpati Devi Wife of Late Devendra Prasad, Resident of Village - Chakmakho, Police Station Jalalpur District Saran at Chapra.
- 1.2. Pramod Kumar Son of Late Devendra Prasad, Resident of Village - Chakmakho, Police Station Jalalpur District Saran at Chapra.
- 1.3. Saroj Kumar Son of Late Devendra Prasad, Resident of Village - Chakmakho, Police Station Jalalpur District Saran at Chapra.
- 1.4. Vinod Kumar Son of Late Devendra Prasad, Resident of Village - Chakmakho, Police Station Jalalpur District Saran at Chapra.
- 1.5. Manorama Devi Daughter of Late Devendra Prasad, Resident of Village - Chakmakho, Police Station Jalalpur District Saran at Chapra.
- 1.6. Pushpa Devi Daughter of Late Devendra Prasad, Resident of Village - Chakmakho, Police Station Jalalpur District Saran at Chapra.
- 1.7. Renuka Devi Daughter of Late Devendra Prasad, Resident of Village - Chakmakho, Police Station Jalalpur District Saran at Chapra.
- 1.8. Nirmala Devi Daughter of Late Devendra Prasad, Resident of Village - Chakmakho, Police Station Jalalpur District Saran at Chapra.
- 1.9. Kiran Prasad Daughter of Late Devendra Prasad, Resident of Village - Chakmakho, Police Station Jalalpur District Saran at Chapra.
2. Ramji Prasad Son of Late Bhola Prasad, Resident of Village - Chakmarno, Police Station - Jalalpur, Post Office - Khodaibag, District- Saran.
3. Raj Narayan Prasad Son of Late Bhola Prasad, Resident of Village - Chakmarno, Police Station - Jalalpur, Post Office - Khodaibag, District- Saran.
4. Lagandeo Prasad Son of Late Bhola Prasad, Resident of Village - Chakmarno, Police Station - Jalalpur, Post Office - Khodaibag, District- Saran.
- 5.1. Usha Prasad Widow of Late Ram Naresh Prasad, Resident of Village - Chakmano, Police Station - Jalalpur, Post Office - Khodaibagh, District- Saran.
- 5.2. Abhinava Raj Son of Late Ram Naresh Prasad, Resident of Village - Chakmano, Police Station - Jalalpur, Post Office - Khodaibagh, District- Saran.
- 5.3. Abhishek Prasad Son of Late Ram Naresh Prasad, Resident of Village - Chakmano, Police Station - Jalalpur, Post Office - Khodaibagh, District- Saran.
6. Janardan Prasad Son of Late Bhola Prasad, Resident of Village - Chakmano, Police Station - Jalalpur, Post Office - Khodaibagh, District- Saran.

... .. Petitioner/s

Versus

1. Prabhu Nath Rai Son of Late Ram Prasad Rai, Resident of Village -



- Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
2. Lalmuni Kunwar Wife of Late Sheoji Rai, Resident of Village - Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
 3. Niraj Kumar Son of Late Sheoji Rai, Resident of Village - Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
 4. Shambhu Prasad Son of Late Ram Prasad Rai, Resident of Village - Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
 5. Srimati Lakhia Devi Daughter of Ram Prasad Rai, Wife of Jang Bahadur Rai, Resident of Village - Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
 6. Dineshwar Rai Son of Late Ekbali Rai, Resident of Village - Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
 7. Tetari Devi Daughter of Late Ekbali Rai, Wife of Harendra Rai, Resident of Village - Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
 8. Girija Devi Daughter of Late Ekbali Rai, Wife of Arjun Rai, Resident of Village - Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
 9. Nirmala Devi Daughter of Late Paras Rai, Resident of Village - Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
 10. Mantu Kumar Son of Late Shankar Rai, Resident of Village - Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
 11. Pintu Kumar Son of Late Shankar Rai, Resident of Village - Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
 12. Indu Kumari Daughter of Shankar Rai, Resident of Village - Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
 13. Mosmat Chando Devi Daughter of Late Banshi Rai, Resident of Village - Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
 14. Hira Devi Daughter of Late Banshi Rai, Resident of Village - Chakmano, Post Office - Khodaibagh, Police Station - Jalalpur, District- Saran.
 15. Sadhu Ray Son of Late Rajendra Ray, Resident of Village - Pandeypur P.S. Chapra Muffasil District Saran at Chapra.
 15. Satendra Ray Son of Late Rajendra Ray, Resident of Village - Pandeypur P.S. Chapra Muffasil District Saran at Chapra.
 15. Bidya Ray Son of Late Rajendra Ray, Resident of Village - Pandeypur P.S. Chapra Muffasil District Saran at Chapra.
 15. Birendra Ray Son of Late Rajendra Ray, Resident of Village - Pandeypur P.S. Chapra Muffasil District Saran at Chapra.
 15. Santosh Kumar Yadav Son of Late Rajendra Ray, Resident of Village - Pandeypur P.S. Chapra Muffasil District Saran at Chapra.



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gopal Pandey, Advocate
Mr. Pramod Ban Bihari Singh, Advocate
For the Respondent/s : Mr. Kumar Mritunjay Narain, Advocate
Mr. Sadanand Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 05-08-2025

Heard learned counsel for the petitioners as well as respondent nos. 10 and 11.

2. The petitioners have approached this Court for quashing of the order dated 03.02.2017 passed by learned Sub Judge-IV, Saran at Chapra in Final Decree Case No. 18 of 1979, whereby and whereunder the petition dated 14.06.2013 filed by the plaintiffs/petitioners under Order 26 Rule 13 of the Code of Civil Procedure for appointment of Survey Knowing Pleader Commission has been rejected.

3. Learned counsel for the petitioners submits that the petitioners are plaintiffs before the learned trial court and they filed partition suit seeking half share. The suit was decreed. Thereafter, Final Decree Case No. 18 of 1979 has been instituted but the learned trial court has rejected the petition of the plaintiffs/petitioners for appointment of Survey Knowing Pleader Commissioner merely on the ground that against Partition Suit No. 18 of 1979 an appeal has been pending before



the appellate court. There has been no stay from the appellate court, still the learned trial court has not been proceeding in the matter. Learned counsel further submits that preliminary decree was prepared on 31.05.2003 and thereafter, the plaintiffs/petitioners have filed petition for carving out their share by *takhtabandi*.

4. Learned counsel appearing on behalf of respondent nos. 10 and 11 supports the contention of the learned counsel for the petitioners.

5. Despite service of notice, there is no representation on behalf of other respondents.

6. Perused the record.

7. From perusal of the record, it is apparent that the learned trial court, vide order dated 03.02.2017, rejected the petition dated 26.11.2016 filed by the plaintiffs/petitioners for appointment of Survey Knowing Pleader Commissioner for want of original record and the orders of learned appellate court. Though there has been observation of learned trial court about original record not available before it but subsequent order of the same day, i.e., 03.02.2017 shows the original record was sent to the learned appellate court in Title Appeal No. 29 of 2003. If the said appeal has not been disposed of till date, final



decree proceeding could not be stayed for time immemorial when there is no stay by the learned appellate court. Therefore, I am of the considered opinion that the learned trial court erred in passing the impugned order dated 03.02.2017 and hence, the same is set aside. Learned trial court is directed to take steps for disposal of Final Decree Case No. 18 of 1979 at the earliest.

8. At the same time, learned first appellate court, who is in seisin of Title Appeal No. 29 of 2003 has if not yet disposed of the title appeal, is directed to dispose of the same within three months from the date of receipt/production of a copy of this order, keeping a copy of the original record while sending the original record to the court of learned Sub Judge-IV, Saran at Chapra in Final Decree Case No. 18 of 1979.

9. Accordingly, the present petition stand allowed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.08.2025
Transmission Date	NA

