

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.917 of 2017**

- =====
1. Anil Kumar Singh
  2. Pashupati Singh
  3. Siya Ram Prasad Singh All are Sons of Late Hira Prasad Singh Resident of Village Tarwara, P.S. Naubatpur, District Patna.

... ... Petitioner/s

Versus

1. Anoj Kumar
2. Manoj Kumar Both Sons of Late Kumar Umesh Chandra Singh
3. Brajesh Chandra Singh S/o Late Jagdish Kumar Kunwar All are residents of Village Tarwana, P.S. Naubatpur, District Patna.
4. Ram Kumar Singh
5. Ram Padarath Singh
6. Krishna Kumar Singh
7. Arun Singh All are Sons of Late Ram Kinkar Prasad Singh
8. Ajeet Kumar S/o Late Lal Narayan Singh All are residents of Village - Tarwana, P.S. Naubatpur, District Patna.

..... Respondent/s

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*Acts/Sections/Rules:*

- *Order 26 Rule 9 and Section 151 of the Code of Civil Procedure*

*Cases referred:*

- *Padam Sen and Another Vs. The State of U.P. reported in AIR 1961 SC 218*

*Petition - filed for setting aside the order whereunder the application filed under Order 26 Rule 9 and Section 151 of the Code of Civil Procedure by the respondent in Title Suit for appointment of Pleader Commissioner was allowed.*

*Held - Title Suit is at the initial stage but from the impugned order it is evident that the issues have not been settled by the trial court. (Para 8)*

*Local investigation could be ordered by the Court for the purpose of elucidating any matter in dispute if it deems it requisite or proper. The application had been filed for appointment of Pleader Commissioner at the initial stage when no occasion arose for the Court to elucidate such a point. - The application was made prior to framing of issues. When the parties are expected to lead evidence after framing of the issues about their claim and unless there is any point which needs elucidation by the Court, the appointment of Pleader Commissioner is not proper. Moreover, every party has to prove its case on the basis of its own evidence and the parties could not take the recourse of the Court to gather evidence on their behalf. The filing of the instant application for appointment of Pleader Commissioner appears to be an exercise only towards this end and the same could not be appreciated. (Para 10)*

*Petition is allowed. (Para 13)*

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**Appearance :**

For the Petitioner/s	:	Mr. Siddharth Harsh, Adv.
For the respondent nos. 4-8	:	Mr. Narendra Kumar Sinha, Adv. Mr. Nishikant Adv.
For the respondent nos. 1-3	:	Mr.Jai Prakash Verma

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

**Date : 06-02-2025**

Heard learned counsel for the parties.

2. The instant petition has been filed for setting aside the order dated 14.02.2017 passed by learned Sub Judge IV, Danapur whereby and whereunder the application filed under Order 26 Rule 9 and Section 151 of the Code of Civil Procedure (in short “the Code”) by the plaintiff/respondent 1<sup>st</sup> set in Title Suit No 433 of 2013 for appointment of Pleader Commissioner stands allowed. Subsequently, by filing interlocutory application,



further relief has been sought against the report dated 16.01.2018 which was submitted by the learned Advocate Commissioner before the learned trial court.

3. Learned counsel for the petitioner submits that the plaintiffs have filed a completely frivolous suit without any documents and in order to create evidence, they filed the application under Order 26 Rule 9 of the Code and the learned trial court erroneously allowed the said application mentioning that for ascertaining the rights and possession over the suit property, the report of the Pleader Commissioner was necessary and thereby allowed the application for submission of report of the Pleader Commissioner on the points mentioned in the application dated 29.11.2016 filed by the plaintiffs under Order 26 Rule 9 of the Code. Learned counsel further submits that claim of the plaintiff is based on the fact that one Jagdish Kumar Kunwar got the suit property from the father of the petitioners, Hira Prasad Singh as well as father of respondent nos. 4, 5, 6, 7 Ram Kinkar Prasad Singh and grand father of respondent no. 8, in the year 1935 and 1936, respectively by way of settlement. But this claim is false and as Hira Prasad Singh was allotted part of the suit property by way of partition after 1963 through Partition Suit No. 55 of 1963. On the other hand, Ram Kinkar Prasad Singh got the suit property by way of Title Partition Suit



No. 52 of 1958/15 of 1959 in which the final decree was prepared on 03.02.1964 and thus, the Schedule 2 of the suit land was allotted to Ram Kinkar Singh and his sons in 1964. If the suit property came into the share of Hira Prasad Singh and Ram Kinkar Prasad Singh in 1963 and 1964 respectively, it was not possible for them to issue Hukumnama or make the settlement of the suit land in 1935, 1936 in favour of Jagdish Kumar Kunwar. When partition took place in the family of Ram Kinkar Prasad Singh sons vide Title Partition Suit No. 180 of 1970, the Schedule 2 land was included and partitioned and the final decree was prepared on 13.03.1974. Learned counsel further submits that in the life time of Jagdish Kumar Kunwar there was partition of his family properties and a compromise decree has been passed. But in the said partition, the present suit property was not included and it goes on to show that the suit land does not belong to Jagdish Prasad Kunwar or his sons. The said partition suit was Title Partition Suit No. 61 of 1970 in which the compromise decree was passed on 06.05.1971 and it also proves that by that time the alleged Hukumnama and Zamindari receipts with respect to the said property were not in existence. Thus, the learned counsel submits that the plaintiffs knowing the fact that they have got no paper of title or possession, tried to create evidence in their favour by filing the application for appointment



of Pleader Commissioner and the learned Trial Court allowed the same when there was no requirement for appointment of Pleader Commissioner in the Title Suit No. 433 of 2013 when the issues were yet to be settled and only pleadings have come on record. However, when the written statement was filed by the defendants/petitioner, the plaintiffs filed their application for appointment of Pleader Commissioner and the same was allowed by the learned trial court against the provisions of law as no party could be allowed to gather evidence in his favour through the Pleader Commissioner. Thus, learned counsel submits that the impugned order is not sustainable and the same be set aside.

4. Learned counsel appearing on behalf of the respondent 1<sup>st</sup> set vehemently submits that there is no infirmity in the impugned order and the same does not require any interference. Learned counsel submits that the learned trial court subsequently modified the impugned order dated 14.02.2017 vide its subsequent order dated 22.09.2017 mentioning therein that by mistake the word calling of the report of investigation regarding the rights and possession on the suit property has been typed in the order sheet while directing for enquiry report of the Pleader Commissioner. Whereas, the direction was only to investigate on the points given by the plaintiffs in the application and the learned trial court further ordered for deleting the words



related to the calling for report regarding the rights and possession of the suit property. Learned counsel further submits that in compliance of the orders dated 14.02.2017 and 22.09.2017, respectively learned Advocate Commissioner has already submitted its report on 16.01.2018. In the said report it has come after physical verification of the suit land that there is building and 'Sahan' of the plaintiff west and south of the disputed plot and tractor and trailer of the plaintiff was also found on the suit plot. Learned counsel further submits that the Hukumnamas of 16.12.1935 executed by Hira Prasad Singh and of 18.11.1936 executed by Ram Kinkar Prasad Singh in favour of the father of respondent 1<sup>st</sup> set, are genuine documents and in any case right and title could be decided only after full trial. Learned counsel further submits that there is no infirmity in the impugned order and the same needs to be sustained.

5. On the other hand, learned counsel appearing on behalf of the respondent nos. 4-8 supported the contention of the learned counsel for the petitioners. Learned counsel further submits that the current rent receipts have been issued in the name of the answering respondents and Jamabandi was existing the their names and a report to this effect has been given by the concerned Government officials namely, Circle Officer and Circle Inspector and this fact has been mentioned in the report of



learned Sub Divisional Officer, Danapur in a proceeding under Section 144 of the Cr.P.C. Learned counsel further submits that the respondents are in agreement with the contention to be forwarded by the petitioners and are adopting the same. Learned counsel further submits that the impugned order is not sustainable since it has been passed against the settled proposition of law.

6. I have given my thoughtful consideration to the submission made on behalf of the parties.

7. Perused the record.

8. Apparently, the Title Suit is at the initial stage but from the impugned order it is evident that the issues have not been settled by learned trial court and there is claim and counter claim of the parties with regard to suit property and both sides claim their right, title and possession of the suit property.

9. Order 26 Rule 9 of the Code reads as under:

*“9. Commissions to make local investigations*

*In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:*

*Provided that, where the State Government has made rules as to the persons to whom such*





*commission shall be issued, the Court shall be bound by such rules.”*

10. The bare reading of the provision makes it clear that a local investigation could be ordered by the Court for the purpose of elucidating any matter in dispute if it deems it requisite or proper. Since the application has been filed for appointment of Pleader Commissioner at the initial stage when no occasion arose for the Court to elucidate such a point, the impugned order would certainly run into rough weather. The plaintiffs sought for the appointment of the Pleader Commissioner to inspect, verify and report about detailed physical features of suit plot with detailed description about storage of sand, ‘Ganaura’, Tractor, flow of drain water etc. with adjoining houses thereof and asking the same be shown in the sketch map. The application was made prior to framing of issues. When the parties are expected to lead evidence after framing of the issues about their claim and unless there is any point which needs elucidation by the Court, the appointment of Pleader Commissioner is not proper. Moreover, every party has to prove its case on the basis of its own evidence and the parties could not take the recourse of the Court to gather evidence on their behalf. The filing of the instant application for appointment of Pleader Commissioner appears to be an exercise only towards this end



and the same could not be appreciated.

11. In *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 deprecated the tendency of the parties to gather evidence through the Court and held that it is not the business of the Court to collect evidence in favour of one party. Therefore, in a matter related to investigation into the disputed question of fact of possession, the power of appointment of Commission for local investigation cannot be exercised by the Court to assist the party to collect the evidence, where the party can collect the evidence himself.

12. In the light of the discussion made hereinabove, I am of the opinion that the impugned order is not sustainable as the same is clearly an error of jurisdiction by the learned trial court and hence, the impugned order dated 14.02.2017 is set aside.

13. Accordingly, the present petition stands allowed.

**(Arun Kumar Jha, J)**

Anuradha/-

AFR/NAFR	AFR
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