

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.765 of 2023**

Smt. Kamini Devi W/o Satya Narayan Singh R/o Village- Nipania, P.O.- Barauni, Pargana, Malki, P.S.- Phulwsaria, District- Begusarai through her Power of Attorney Holder and son- Vivek Kumar, aged about 44 Years, Male, S/o Satya Narayan Singh, Village- Nipania, P.O.- Barauni, Pargana- Malki, P.S.- Phulwsaria, District- Begusarai.

... .. Petitioner/s

Versus

1. Ram Balak Prasad S/o late Jalo Singh R/o Village- Nipania, P.O.- Barauni, Pargana, Malki, P.S.- Phulwsaria, District- Begusarai.
2. Naudeo Singh, S/o Late Harkhit Singh R/o Village- Madharapur Bichlatala, Pargana- Imadpur, P.O.- Barauni Deodhi, P.S.- Teghra, District- Begusarai.
3. Rampravesh Singh, S/o Late Harkhit Singh R/o Village- Madharapur Bichlatala, Pargana- Imadpur, P.O.- Barauni Deodhi, P.S.- Teghra, District- Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Binod Kr. Singh, Adv., Advocate Mr. Vagisha Pragya Vacaknavi, Advocate
For the Respondent/s	:	Mr. Shardha Nand Mishra, Advocate Mr. Ashok Kumar Mishra

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

Date : 03-04-2025

Heard learned counsel for the parties.

02. The petitioner is aggrieved by the order dated 11.05.2023 passed by learned Sub Judge, Teghra in Title Suit No. 188 of 2013 whereby and whereunder the application filed by the plaintiff/respondent no. 1 on 02.03.2022 under Order 26 Rule 10 & 10-A and under Section 151 of the Code of Civil Procedure (in short "the Code") has been allowed.

03. Learned counsel for the petitioner submits that the plaintiff/respondent no.1 has filed the Title Suit bearing no. 188



of 2013 in the Court of learned Sub Judge, Begusarai against the defendant/petitioner and two others for the relief regarding declaration of *bona fide* right, title and interest of the plaintiff/respondent's joint family over Schedule II land comprised in Khata No. 326, Plot Nos. 425, 426, 427, 428, 429, 430, 431, 433 Milzumla area 1 bigha 13 katha out of Schedule 1 land comprised in Khata No. 326, Plot Nos. 425, 426, 427, 428, 429, 430, 431, 433, area 9 bigha 12 katha 9 dhurs. Defendant appeared and filed written statement contesting the claim of the plaintiff. Plaintiff/respondent no. 1 filed a petition on 02.03.2022 under Order 26 Rule 10 & 10-A and under Section 151 of the Code for appointment of Survey Knowing Pleader Commissioner for measurement of land as to whether 9 bigha 12 katha 9 dhurs is one block or not and any other point raised by the plaintiff/respondent no. 1. Learned trial court allowed the said application which is under challenge before this Court.

04. Learned counsel further submits that the impugned order has been passed without consideration of facts and the law. No party could be allowed to gather evidence through the process of the Court and allowing the application for appointment of Pleader Commissioner would only enable the plaintiff/respondent no. 1 to gather evidence in his favour.



Learned counsel referred to the decision of this Court in the case of *Anil Kumar Singh & Ors. Vs. Anoj Kumar and Ors* passed in *Civil Misc. Jurisdiction No. 917 of 2017* dated **06.02.2025** whereby and whereunder this Court has recorded a finding that it is not the business of the Court to collect evidence in favour of one party and 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. In this regard reliance was placed on the decision of a three Judge Bench of the Hon'ble Supreme Court in the case of *Padam Sen and Another Vs. The State of U.P.* reported in *AIR 1961 SC 218*. Learned counsel further submits that the impugned order is without any reasons and it is a completely non-speaking order and hence, it could not be sustained.

05. Learned counsel appearing on behalf of respondent no. 1 vehemently contends that there is no infirmity in the impugned order. Learned counsel submits that in the present matter after the witnesses of the plaintiff were examined, the petition under Order 26 Rule 10 & 10-A and under Section 151 of the Code has been filed and the said application was allowed vide the impugned order. But there is no adverse effect on any



of the parties by the operation of the impugned order and the said is only to assist the Court in finding adjudication of the case. The learned counsel further submits that if there is no prejudice being caused to either of the parties, challenging the appointment of Pleader Commissioner is not justified. The report of the Pleader Commissioner is only for the purpose of assisting the Court for arriving at a proper decision. Learned counsel referred to a decision of the learned Single Judge of this Court in the case of *Tabarak Khan @ Md. Tabarak Khan Vs. Niraj Kumar Agarwal & Anr.* passed in *Civil Misc. Jurisdiction No. 1693 of 2019* dated *09.12.2019* wherein the learned Single Judge refused to entertain a challenge to the appointment of Pleader Commissioner who was appointed to assess the physical features of the suit property. Learned counsel refers to another case of *Smt. Savitri Devi vs Smt. Sobha Sharma and Ors.* passed in *Civil Writ Jurisdiction Case No.19298 of 2015* on *18 April, 2019* wherein the learned Single Judge held that as the appointment of Survey Knowing Pleader Commissioner will not cause any prejudice to either party the Survey Knowing Pleader Commissioner is only an aid to the adjudication and if the petitioner has any grievance on the report of the Survey Knowing Pleader Commissioner, liberty shall be available to the petitioner to file his objection on the report submitted by the



Survey Knowing Pleader Commissioner and no illegality has been found in the order. Thus, learned counsel submits that there is no infirmity in the impugned order.

06. I have given my thoughtful consideration to the rival submission of the parties. Bare perusal of the impugned order shows the learned trial court has not at all considered the reasons for appointment of the Survey Knowing Pleader Commissioner and the Hon'ble Supreme Court in a catena of decisions has held that an order bereft of reasons could not be sustained as reasons are the heart beat of a decision.

07. The Hon'ble Supreme Court in the case of ***Raj Kishore Jha vs. State of Bihar & Ors.*** reported in ***AIR 2003 SC 4664*** has held that reason is the heartbeat of every conclusion.

08. Further, the Hon'ble Supreme Court in the case of ***Kranti Associates Private Limited & Anr. vs. Masood Ahmed Khan & Ors.*** reported in ***(2010) 9 SCC 496*** has held that reasons in support of decisions must be cogent, clear and succinct. A pretense of reasons or rubber-stamp reasons is not to be equated with a valid decision-making process.

09. The decision in ***Kranti Associates Private Limited*** (supra) of the Hon'ble Supreme Court stresses upon the importance of reasoned judicial orders and have discussed elaborately why reasoning is the soul and heart of the justice.



10. Therefore, without going into the merits of the rival submission, the impugned order dated 11.05.2023 is set aside for being devoid of any reasons and learned trial court is directed to pass a reasoned order afresh on the application of the plaintiff dated 02.03.2022 within a month from the date of receipt/production of copy of this order.

11. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.04.2025
Transmission Date	N/A

