

IN THE COURT OF Civil Judge (Sr. Div.)-I, PIRO, BHOJPUR
Title Suit No. 273 of 2022

Ramniwas Verma & others

.....Plaintiffs

Versus

Hareram Verma & others

.....Defendants

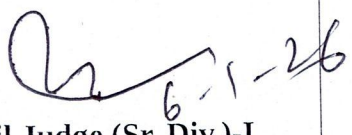
Sl. no.	Date of order of proceeding	Order with signature of the Court
1	2	3
06-01-2026	<u>ORDER</u> Attendance has been filed on behalf of both the parties through learned counsel. The instant record has been put up for order today over petition dated 28.04.2025, filed on behalf of defendants under Order 26 Rules 9 read with Section 151 C.P.C against plaintiffs. The plaintiffs have filed their rejoinder on 19.05.2025 to the said petition of the defendants against their prayer. It is prayed on behalf of defendants to appoint a non-survey pleader commissioner for the purpose of reporting upon the present physical feature of the disputed land mentioned in schedule I land of the plaint. The defendants have given few points in the petition and even asking for report of the said commissioner upon the possession of the person upon the said disputed land. It is stated in the petition dated 28.04.2025 that for the adjudication of this suit, it is necessary to appoint the pleader commissioner to investigate and report on the present physical feature of the disputed land. The rejoinder has been filed on behalf of plaintiffs on 19.05.2025 with a prayer to reject the petition of the defendants on the grounds that it is not maintainable on the facts and law. It was further submitted that appointment of such commissioner is not required for the reason that there is no question of <i>mesne</i> profit or any other related matter involved in the suit. This petition has been filed on for the purpose of collecting evidence on the point of possession which is legally not permissible as per direction of Hon'ble Patna High Court vide Civil Misc. Jurisdiction No. 917 of 2017 dated 16.02.2025. It was further pleaded on his behalf that the points upon which the report of commissioner is sought reflect the intention of the defendants that they are willing to gather the evidence through the process of this Court on these grounds he prayed to reject the petition filed on behalf of defendants. Heard the learned counsel for the parties and perused the case record. The plaintiff has brought this suit against the defendants for issuance of permanent injunction upon schedule K of the plaint and with further prayer for recovery of possession if the plaintiff is found dispossessed. The written statement has been filed on behalf of defendant on 05.12.2023 with prayer to dismiss the suit. It is pleaded on behalf of defendants that each and every resident of semraon village is having collective possession over the disputed land in the north portion of the same, a temple has been constructed by the villagers and fair is organized during Durga Puja season. khatiyani has been prepared in the name of Bihar Sarkar wrongly rather it should have been recorded as <i>Sarvsadharan Anabad</i> Bihar Sarkar. Upon the minute perusal of the petition, it is clear that the intention of defendants is to collect the evidence with	

regard to possession in relation to disputed property through the process of this Court and the same is not legally permissible. 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 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 favor of one party. Therefore, in a matter related to investigation into the disputed question of fact of possession, the power of appointment of commissioner for local investigation cannot be exercised by the Court to assist the party to collect the evidence, where the party can collect the evidence itself.

It is ample clear that a party who asserted the fact relating to possession is under duty to prove the same.

In the light of above discussions and proposition of law this court is of the considered opinion that the petition filed on behalf of defendants is not having force of law and without any merit. The same is hereby rejected.

Put up on 30.01.26 for further proceeding.


Civil Judge (Sr. Div.)-I
Piro at Bhojpur