

In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Title Suit No.-110 of 2007, Registration No.-1714/14

Chhedi Sahoo vs. Raghunath Sahoo & Others

29-10-2021

Case is called out and record is produced before me. A Wakaltan hazari is filed on behalf of the Plaintiff while defendants are absent. Perused the case record. On perusal of the case record, it appears to the Court that this suit has been pending for order on petition dated-18.06.2019 filed on behalf of the defendant 3rd party U/O-XXXI, Rule-7 of the Civil Procedure Code herein after referred as the C.P.C. In this petition, it has been submitted that prior to this petition two petitions were filed on behalf of the defendant 3rd party. Further submission of the petitioner is that 1st petition was rejected on the ground of wrong provisions and even in 2nd petition proper provision was not mentioned. In this petition, petitioner want to appoint a Pleader Commissioner for inspection on following points-

(A) Whether a pucca building of defendant 3rd party is standing in the east boundary of 15 Dhur and the said building covers near about 2 ½ Dhurs of suit land out of 15 Dhurs apart from other land ?

(B) Has any material like drum of K. oil and other materials of fair price shop over 10 Dhurs of land obtained by the defendant from Raiyat of C.S. Khatiyani ?

(C) Whether the present boundary of 5 Dhur of suit land purchased on 21.01.2000 by virtue of registered sale deed from Bhola Sahoo is amalgamated with the 10 Dhurs of land obtained by defendant 3rd party members from Khationi Raiyat as free gift ?

A rejoinder petition has also been filed on behalf of the plaintiff on 03.07.2019. Besides other ornamental defence, plaintiff opposed the petition dated-16.08.2019 on the ground that in present suit evidence of both parties have been closed and case is fixed for argument and in this circumstances appointment of Pleader Commissioner is not permissible. Further submission of the plaintiff is that defendant has filed the petition for collection of evidence and law does not permit this. This is third petition of the defendant for appointment of Pleader Commissioner.

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Prior to this,a petition for appointment of Pleader Commissioner was rejected on merit on 25.04.2018 by holding therein that defendant 3rd party filed this petition for collection of evidence in their favour which is not in accordance with law. So there is no force in petition which is filed for making delay in the case. Thus petition 20.02.2018 filed by the defendant 3rd party is hereby rejected. Further submission of the plaintiff is that there is no merit in petition dated-18.09.2019 and the same is fit to be rejected.

Heard both the learned counsels and perused the case record. On hearing and perusal of the case record, it appears that this instant suit has been brought by the plaintiffs against nine defendants on 10.12.2007. After admission, summon was issued against the defendants. Defendants No.4 to 9 (3rd party) appeared in this suit on 25.07.2008 and filed the W.S. on 23.10.2008. It further appears that Ex parte proceedings was initiated against Defendant N.o-1 to 3 on 28.08.2009. It further appears that issues were settled/framed on 08.09.2009 and since 11.09.2009, this suit was fixed for plaintiff evidence. Further, plaintiff evidence was closed on 23.07.2010 and since 02.08.2010 this suit has been pending for defendant evidence. It further appears that defendant evidence was closed on 30.09.2013 and a petition to recall the order dated-30.09.2013 was filed on behalf of the defendant on 16.01.2014 and after hearing the same was allowed with cost of Rs.-500/-with direction to conclude evidence with five consecutive dates and ultimately evidence of the defendant was closed on 05.05.2016. It further appears that since 06.06.2016, this instant suit has been pending for defendant argument and argument of the defendant was concluded on 06.12.2016 and record was fixed for plaintiff argument. Meanwhile an amendment petition U/O-VII,Rule-17 of the C.P.C. and a petition U/O-XIV,rule-5 of the C.P.C. were filed on 18.12.2017 and after hearing the same was allowed with cost of Rs.-700/- on 03.01.2018. Meanwhile, a petition to recall P.W.-5 for evidence was filed on behalf of the plaintiff on 18.01.2018 and when this suit was pending for

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Continued..... its rejoinder, a petition U/O-I,rule-8 of the C.P.C. was filed on behalf of the defendant 3rd party on 20.02.2018. After hearing the parties,the petition dated-20.08.2018 was rejected with observation that defendant 3rd party has filed this petition for appointment of Pleader Commissioner for collection of evidence in their favour which is not in accordance with law. Thus, there is no force in petition which is filed for causing unnecessary delay in this case. Thus, petition dated- 20.02.2018 filed by the defendant 3rd party is hereby rejected. It further appears that a petition U/O-XXVI,Rule-9 of the C.P.C. was filed on behalf of the defendant 3rd party on 08.08.2018 for appointment of Pleader Commissioner and the same was rejected as not pressed on 28.05.2019. Thereafter again a petition U/O- U/O-XXXI,Rule-7 of the C.P.C. was filed on behalf of the defendant 3rd party on 18.06.2019. Meanwhile, when this suit was pending for hearing on petition dated-18.06.2019,defendant 3rd party pressed their petition dated-08.08.2018 and the same was again rejected on 05.03.2020 with observation that such petition has already been rejected as not pressed,it is not justifiable to pass any order on the same. It further appears that after several directions, defendant 3rd party appeared for hearing on petition dated-18.06.2019 and the same is fixed for order today.

On hearing and perusal of the case record, it transpires that the purpose for which appointment of Pleader Commissioner is mentioned in the petition dated-18.06.2019 is a nature of collecting of evidence on behalf of the defendant. As per the mandated U/O-XXXI,Rule-7 of the C.P.C. appointment of Pleader Commissioner is required for elucidating the suit land or local inspection of the suit or suit property. It further appears that prior to this petition, two more petition of same nature have already been disposed of by the Court. This suit has been pending at the stage of argument since 06.06.2016 and five years have already been passed since then, but instead of arguing several petitions have been filed by the parties after one and another.

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The Court is of opinion that petition filed on behalf of the defendant 3rd party is devoid of merit and also for lingering this case on. The Court is not inclined with the contention of the defendant 3rd party. Thus, petition dated- 18.06.2019 filed on behalf of the defendant 3rd party is disposed of as rejected. Since this suit is almost fifteen years old case and as per the direction of Hon'ble High Court of judicature at Patna disposal of such an old case is highly essential. Therefore, defendant are directed to come prepared for argument. Fixing on ...15.11.21... for further argument.

Dictated

Sub Judge-II

29-10-21