

In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Title Suit No.-12 of 2017, Registration No.-19/17

Ramdev Jha & Others vs. The Secretary Bihar Bhudan Yagya Samiti & Others

14-07-2022

Case is called out and record is produced before me. A Wakaltan hazari is filed on behalf of the Plaintiff and defendants no.-3,4 & 5. Perused the case record. On perusal of the case record, it appears to the Court that this suit has been fixed for order on petition dated-31.08.2018 filed on behalf of the plaintiff U/O-XXXIX, Rule-7 of the Civil Procedure Code herein after referred as the C.P.C. In this petition, it has been submitted that plaintiffs have filed a petition for injunction and it is necessary to call for report from Advocate Commissioner regarding status quo of the land suit.

Therefore, it is prayed that the Court be pleased to appoint a Pleader Commissioner for status quo of land in suit on the points given below-

- A.-Present status quo of the suit land
- B.-Whether materials for construction have been stored at the P.O. or not
- C. Any other point or points to which the Ld. Commissioner deems fit and proper in respect of the suit land be reported.

A rejoinder petition has been filed on behalf of the defendants on 03.11.2018 on petition dated-31.08.2018. In this rejoinder, it has been submitted that petition dated-31.08.2018 filed on behalf of the plaintiff is not maintainable. This petition is barred by law of Limitation as well as principles of Estoppel, waiver and acquiescence. Further submission of the defendants is that object to file the petition is vague and the petition is filed for collection of evidence on behalf of the plaintiff, rather plaintiff should file the petition for appointment of Survey Knowing Pleader Commissioner so that real status of the land in suit would come before Court and it would be helpful for passing judgment. It has been further submitted that defendants 2nd party have been in possession of the suit land on which there is house and orchard. Therefore, it is prayed that petition dated-31.08.2018 filed on behalf of the plaintiff be dismissed.

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Continued.....

Heard the learned counsels of plaintiff and defendants on petition dated-31.08.2018. Perused the case record. On hearing and perusal of the case record, it appears to the Court that this instant suit has been filed against the seven defendants on 22.03.2017 and after admission, defendants were summoned. It further appears that defendant no.-3,4 & 5 appeared in the suit on 14.07.17 and filed the W.S. on 23.08.2017. Meanwhile, defendant no.-3 namely Jhameli Ram died and his legal heirs have been substituted by the order dated-22.05.2018. Thereafter, his legal heirs appeared in the suit on 23.07.2018 and filed a petition on 23.08.2018 for adoption of W.S. filed on behalf of his father on 23.08.2017. It further appears that on same date defendant no.-1 & 2 appeared in the Court and filed the W.S. Then on next date the instant petition was filed on 31.08.2018 U/O- XXXIX,Rule-7 of the C.P.C. and after rejoinder and hearing,the same is fixed for order. It further appears that instant suit has been still running at the stage of appearance of the parties,then this instant petition U/O-XXXIX,Rule-7 of the C.P.C. was filed on behalf of the plaintiff.

Submission of the plaintiff is that the a petition for injunction has been filed on behalf of the plaintiff and therefore, it is necessary to call for report from Pleader Commissioner regarding status quo of the land suit. Therefore, a petition U/O-XXXIX, Rule-7 of the C.P.C. has been filed on behalf of the plaintiff to bring the status quo of the suit land on record. On the other hand, the learned counsel for the defendants submitted that the Survey Knowing Pleader Commissioner be appointed instead of Pleader Commissioner.

From perusal of the application and rejoinder, it appears that there is no dispute regarding the identity of the suit property and the plaintiff has filed this suit for declaration of title,the Survey Knowing Pleader Commissioner is not required to be appointed.

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So far the appointment of Pleader Commissioner is concerned, the Court is of opinion that within the meaning of Order XXXIX, Rule-7, Court may appoint any person for the detention, preservation or inspection of any property which is the subject matter of such suit or as to which any question may arise therein.

Thus, petition dated-31.08.2018 filed on behalf of the plaintiff is allowed. Further, the Commissioner so appointed by this order will submit the report regarding the present status quo of the suit land within one month from appointment. Plaintiff is directed to deposit the sum of Rs.-1000/- in Nazarat as fee of the Pleader Commissioner. Thus, petition dated-31.08.2018 filed on behalf of the plaintiff is disposed of as accordingly.

Fixing on for depositing the fee in Nazarat

Dictated


Sub Judge-II