

**IN THE COURT OF CIVIL JUDGE (S.D),
GOGARI, KHAGARIA
PRESENT PRESIDING OFFICER SH. SUMIT KUMAR SINGH
TITLE SUIT NO. 87 OF 2019**

IN THE MATTER OF:

KAPILDEO YADAV & ORS.

...PLAINTIFFS

VERSUS

RAM SHAKHI DEVI & ORS.

...DEFENDANTS

**ORDER
22.06.2022**

Present application dated 03.02.2022 has been filed by the plaintiffs under Order 26 Rule 10A CPC for scientific investigation of the suit land.

Plaintiffs have approached this Court seeking declaration of their right and confirmation of their possession, over the suit land. And in alternate, that during the pendency of suit, if they are dispossessed from the suit land the vacant possession of the suit land may be delivered to them.

It is the case of plaintiffs that the suit land includes plot no. 184 having total area of 5 Bigha 14 Katha 16 Dhur land in possession of plaintiff. Out of the said total area plaintiffs have claimed that the defendants have raised their independent claim over an area of 1 Bigha 10 Katha. It is further case of plaintiffs that the defendants have appeared and have filed their written-statement. In their written-statement they have denied existence of suit land admeasuring 1 Bigha 10 Katha on the spot, as mentioned in

schedule-II of the plaint.

It has been alleged that one Dalip Gop was the recorded tenant of the property as mentioned in schedule-I of the plaint. It was also claimed in the present application, that Dalip Gop was survived by his two sons Badri Gop and Raghubar Gop. Badri had died leaving behind his son Bhusi Gop and Raghubar had died leaving behind his son Gango Gop.

It was further alleged that the ex-landlord had filed the return for suit land in the name of Bhusi Gop and Gango Gop confirming their title and possession at the relevant time. Accordingly, the suit land was mutated in their name with the State of Bihar. After some time the two brothers have partitioned their property half and half. However, defendants have raised their claim on the basis of a partition deed dated 17.11.1961. Hence, the present suit was filed. During pendency of the suit, plaintiffs have filed an application for grant of ad-interim injunction against the defendants on 29.01.2021 which is pending. Defendants have filed their reply to the show cause. In their reply they have again objected the independent existence of property as described in schedule-II of the plaint. It was also submitted that the defendants have filed their written-statement and admitted in paragraph 17 that the correct status of existence or non-existence of suit land can be ascertained

only by physical verification of the suit land. Hence, the plaintiffs have filed the present application to ascertain the existence of property as described in schedule-II of the plaint. It was then claimed by the plaintiffs that the dispute between the parties would be better adjudicated if the true and correct identification of land is brought before this Court. Hence, prayer was made to appoint survey knowing pleader commissioner.

On the other hand defendants have objected the present application on various grounds which is necessary to be elaborated herein.

FIRST GROUND

It was claimed that the plaintiffs have pleaded in the present application that Dalip Gop was survived by his two sons Badri Gop and Raghubar Gop. However, in their plaint, plaintiffs have pleaded that Dalip Gop was survived by his only son Shiv Lal Gop. Thus, it was claimed by the defendants that the present application is nothing but a misrepresentation by the plaintiffs to obtain a favorable order.

SECOND GROUND

It was further claimed that the plaintiffs have filed the present application without citing cogent and valid purpose for appointment of commissioner for scientific investigation. It was

claimed that plaintiffs have filed the present application merely to collect evidence in their favor which they otherwise do not have.

THIRD GROUND

It has been submitted that the plaintiffs have claimed that the descendants of khatiyani raiyots have already partitioned the property in plot no. 184. Thus, it is not possible that before partition the property measuring 5 Bigha 14 Katha 16 Dhur would have remained intact and that too solely in the possession of plaintiffs. It was also claimed that there is no block or separate independent property having an area of 1 Bigha 10 Katha in plot no. 184. Thus, the claim of plaintiffs was denied by the defendants. It was then contended that the plaintiffs have given description of 5 Bigha 14 Katha 16 Dhur land in plot no. 184 with specific boundary in schedule-I of the plaint. Then the plaintiffs have mentioned separate block of 1 Bigha 10 Katha land in plot no. 184 with the same boundary. Thus, it was claimed that the identity of property as described by the plaintiffs in their schedule-I and schedule-II of the plaint does not make it clear that which part of the suit land they wish to be measured.

FOURTH GROUND

It was further argued that previously a zamabandi correction case was also litigated between the parties. The matter was put up

before the DCLR, Gogri who had directed the Circle Officer to measure the property and file a report thereafter with regard to suit land as described in schedule-II of the plaint. It was submitted that the Circle Officer had found the defendants in possession of suit land.

Thus, on the basis of varied claims as detailed above, defendants have prayed the present application may be rejected.

FINAL DETERMINATION BY COURT

Heard ld. Counsel for the parties and perused the record. The purpose for appointment of commission for scientific investigation has been mentioned in Order 26 Rule 10A. The said provision is reproduced herein for reference:

10A. Commission for scientific investigation— (1) *Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.*

(2) *The provisions of rule 10 of the Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.*

Perusal of the aforementioned provision would show that the Court

may appoint commission for scientific investigation where a question involves scientific investigation, if the same is necessary or expedient in the interest of justice.

Facts of this case would make it clear that the plaintiffs have approached this Court seeking prayer for declaration of their title and confirmation of possession over property as described in schedule-II of the plaint. On the other hand defendants have objected the suit on the ground that the property in schedule-II of the plaint has always remained in their possession and plaintiffs were never in possession. At the same time they have also claimed that there is no such property in existence on spot, as described by the plaintiffs in schedule-II of the plaint. Hence, the question before this Court is whether property as described by the plaintiffs in schedule-II of the plaint exists on spot or it has never existed. For determination of this question, it is expedient to issue a direction for scientific investigation of the property as mentioned in schedule-II of the plaint.

Now it is important to determine the objection raised by defendants in their reply. Their first objection shows that the present application was drafted by the plaintiffs without verifying the correct facts. It was claimed by the plaintiffs in their plaint that Dalip Gop had died leaving behind his son Shiv Lal Gop and Badri

and Raghubar were grand sons of Dalip Gop. However, in the present application the two have been shown as sons of Dalip Gop. It appears that there is an error in mentioning the genealogical table in the present application by the plaintiffs. However, this mistake has nothing to do with the question in hand before this Court. As such the first objection is not tenable.

So far as second and third objections are concerned they are interconnected. As mentioned earlier the question before this Court is whether property as described by the plaintiffs in schedule-II of the plaint exists on spot or it has never existed. And for answer the exact same question, it is expedient to appoint Commission.

So far as fourth objection is concerned it is clear that the defendants have raised their specific claim over 1 Bigha 10 Katha land. This is the property mentioned in schedule-II of the plaint and the same is suit land. If the defendants are in possession of suit land, then they should not have objected to its independent existence. At the same time they should have fairly conceded to the request of plaintiffs for appoint of commission. It appears that there is an objection by the defendants only for the purpose of objecting the application but not with intent to bring out the real facts before this Court.

The question of independent existence of suit land as described by

the plaintiff in schedule-II of the plaint indeed involves scientific investigation and the same is necessary and expedient in the interest of justice in the opinion of this Court. Hence, the present application is hereby allowed. Fees of commission is fixed at Rs. 7,500. Plaintiffs are directed to deposit the fees in Nazarat, Civil Court, Khagaria within 15 days. On deposit of fees and production of such receipt, office is directed to issue a request letter to the Id. District Judge for nomination of a Survey Knowing Pleader Commissioner for scientific investigation of suit land.

List the matter on 12.07.2022.

Civil Judge (SD)