

In,

**The Court of Fast Track Court,
Vaishali at Hajipur.**

Title Appeal No. 01/1996

ORDER

26-02-2021 In this appeal a petition has been filed on 21-01-2001 by the appellant for appointment of plader Commissioner for measurement of the land and to prepare the partition map of cadestral Survey and revisional survey and to submit the report. It has been stated that the appeal has been preferred against the judgment and decree passed by Munsif 1st, Hajipur in T. S No. 119/1986. In para no. 5 of the plaint T.S. No. 119/1986 it appears that plaintiff Smt. Kanchan Devi stated that 1 Katha part land of northern portion of CSP No. 13 has been included in the land of respondent of CSP No. 12 of which RSP No. 2028 has been carved out. In para no. 6 of the plaint it has been stated land adjoining to the land of Smt. Kanchan Devi in south apertaining to CSP No. 14 of which 1 Katha northern portion included in RSP no. 2029. Other statement similarly made in the suit the learned Court below on the prayer of plaintiff has appointed Sri Shambhu Nath Prasad Survey knowing pleader commissioner who has submitted field book, map and report of the measurement but he was neither examined nor cross examined. It has been stated that one Mustakim Khan has also submitted report of measurement. Both pleader commissioner are not alive and the dependant appellant could not cross examine. It has been stated that Civil Advocate Sri Shambhunath Gupta is eldest son of plaintiff Smt Kanchan Devi who are examined as PW- 2 and after death of his mother he is respondent. Shambhunath Gupta in his influence got submitted wrong report by both pleader commissioner. Prayer has been made to get appointed Survey knowing pleader commissioner to get submitted report on the point given in the petition.

2. Rejoinder to which has been filed by respondent first party on 23-01-2001 in which it has been stated that the learned Court below has appointed

pleader commissioner who served notice to both parties and their Advocate and made local inspection prepared field book, map and submitted report. None of the parties sought permission to examine the pleader commissioner report of the pleader commissioner are part of the record. Order 26 Rule 10(A) does not apply in the appeal. Moreover PW- 7 has been examined and prayer has been made to reject the petition.

3. Respondent no. 3 Upendra Choudhary filed petition on 25-01-2021 to allow the petition of the appellant. He has also filed petition on 21-01-2001 to allow the petition filed by the appellant.

4. Heard learned Counsel on behalf of both the parties and perused the record.

5. Plaintiff got examined six witnesses and filed documentary evidence.

6. Order 26 Rule 10 provides procedure of commissioner in which it has been stated that commissioner as he deems necessary and after reducing to writing the evidence taken by him, shall return as such evidence altogether with his report in writing signed by him to report. Commissioner may be examined in present. Where the Court is for any reason dissatisfied with such proceeding of commissioner it may direct as such further inquiry to be made and as it shall thinks fit. Nothing has been brought on record that the learned Court below was not satisfied with such report of pleader commissioner.

7. The judgment reported in 1965 Kerala page 95, it has been stated that issue of 2nd commissioner on the same subject without setting aside report of first commissioner, no illegality but mere irregularity. Earlier report has not been set aside nor it has been stated that how that report is wrong only allegation has been made that Commissioner were under influence of Advocate Shambhunath Gupta.

8. In view of 1991(1) PLJR 236 it has been held that during pendency of appeal it will be unnecessary to appoint any other pleader commissioner for the same purpose. Moreover the case of Narayan Guptan Vs. Madhav Menon & Ors. Judgment in which has been held that in 1964 that issue of second commission, even if done with the consent of parties is illegal and is contrary to

the provision of order 26 Rule 10.

9. In that view of the matter the petition filed by the appellant is hereby rejected.

Fast Track Court,

Vaishali at Hajipur.

26-02-2021

