



2026:PATHC:46234

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.275 of 2026

1. Jitendra Kumar @ Jitendra Kumar Sharma Son of Raghuvir Sharma, Resident of Village- Usri Chakia, Post Office- Ushri Bazar, Anchal- Kaler, Police Station- Mehandia, District- Arwal.
2. Deepak Kumar, Son of Raghuvir Sharma, Resident of Village- Usri Chakia, Post Office- Ushri Bazar, Anchal- Kaler, Police Station- Mehandia, District- Arwal.

... .. Petitioner/s

Versus

Kapildeo Singh Son of Late Baleshwar Singh, R/o Village- Chakia Usri, Post Office- Ushri Bazar, Anchal- Kaler, Police Station- Mehandia, District- Arwal.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Srinandan Pd. Singh, Sr. Adv. Mr. Bipin Kumar, Adv. Mr. Abhishek Kumar, Adv.
For the Respondent/s	:	Mr. Chandra Kant, Adv. Mr. Navin Kumar, Adv. Mr. Sudhanshu Prakash, Adv. Ms. Karnika, Adv. Ms. Sristi Kumari, Adv.

CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL ORDER

3 18-04-2026 Heard learned counsel for the petitioners and learned counsel appearing on behalf of respondent.

2. The instant application has been filed for setting aside the order dated 03.02.2026 passed by learned District and Additional Sessions Judge – II, Jehanabad in Title Appeal No. 25 of 2024 by which the petition filed under Order XXVI Rule 10(A) of the Code of Civil Procedure and Order XLI Rule 27 of the Code of Civil Procedure respectively, has been dismissed. The petition of Order XXVI Rule 10(A) of the Code of Civil





Procedure was filed on 24.11.2025 for appointment of survey knowing pleader commissioner and petition under Order XLI Rule 27 of the Code of Civil Procedure was filed on 07.02.2026 for a request of mark exhibit the report of survey knowing pleader commissioner who was appointed by the order of the learned Deputy Collector Land Reforms (DCLR), Arwal and gave report on 11.12.2023.

3. Learned counsel for the petitioner submits that the plaintiff–respondent instituted Title Suit No. 49 of 2023 seeking declaration of his title and removal of encroachment over the suit property. The suit was decreed in favour of the plaintiff–respondent, and accordingly the defendant was directed to remove the encroachment. Aggrieved by the said judgment and decree, the defendant preferred Title Appeal No. 25 of 2024. During the pendency of the appeal, the defendant–appellant (petitioner herein) filed a petition under Order XXVI Rule 10 of CPC for appointment of a survey-knowing pleader commissioner to conduct a scientific measurement of the alleged encroached land as described in the plaint. The said petition was disposed of by the learned Appellate Court vide the impugned order dated 03.02.2026, wherein it was held that the decision on the petition would be taken at the time of final





adjudication of the appeal. This order is under challenge in the present civil miscellaneous application.

4. The petitioner–appellant seeks appointment of a survey-knowing pleader commissioner during the pendency of the appeal primarily on two grounds. Firstly, no survey-knowing Pleader Commissioner was appointed by the Trial Court for proper adjudication of the issue of encroachment. Secondly, the reports of the Anchal Amin and the Three-Men Committee consisting three Amins, constituted by the DCLR, whose members were also Amin, were not duly proved in accordance with law. These reports were exhibited on the basis of secondary evidence, as none of the Amins were produced as witnesses. Consequently, the defendant–appellant–petitioner was deprived of the opportunity to cross-examine them. Despite this, the learned Trial Court has relied upon these reports and impugned judgment has been passed on the basis of aforesaid report.

5. Per contra learned counsel for the respondent submits that certainly the Amins have not been examined before the trial court, but the entire report regarding the measurement of suit property has been marked at the time of trial and no objection was raised on behalf of the petitioner at that time.

6. From perusal of the case record, it transpires that it





is an admitted position that Plot No. 2751 belongs to the plaintiff, whereas Plot No. 2752 belongs to the defendant. There is no dispute on this aspect, as the petitioner–defendant has himself admitted the same fact during the course of cross-examination, which is also reflected in the impugned judgment. Thus, the only issue that remains to be determined by the Appellate Court is whether any encroachment has been made by the petitioner upon Plot No. 2751, particularly when the petitioner does not claim his title over the said plot. For proper adjudication of this issue, scientific measurement appears to be essential.

7. According to learned counsel for the respondent, such measurement has already been conducted twice—first by the Anchal Amin and thereafter by a Three-Men Committee constituted by the DCLR, comprising three Amins. However, learned counsel for the petitioner fairly contends that these reports were not prepared in the present proceeding rather it pertain to earlier collateral proceedings, and have merely been brought on record in the present case and have been marked as exhibits without examining the concerned Amins. So virtually the judgment has been passed against the defendant without examining the author of the report i.e. Amin in this case. The





said report is marked by the learned Trial Court as exhibit 1/B and 1/D respectively.

8. Learned counsel for the respondent placed reliance on the judgment passed in Civil Miscellaneous Jurisdiction No. 572 of 2023 dated 11.06.2024 by a Co-ordinate Bench of this Court, and contended that the petitioner is not entitled to seek appointment of a survey-knowing pleader commissioner afresh during the pendency of the appeal. In support of this contention, reliance has been placed on paragraphs 7 and 40 of the said judgment.

9. However, upon perusal of the aforesaid judgment, it appears that in that case a survey-knowing pleader Commissioner had already been appointed, and a subsequent prayer for appointment of another Commissioner was declined. In the present case, however, no survey-knowing pleader commissioner has ever been appointed at any point of time to ascertain the factual position regarding the alleged encroachment.

10. If the evidence of above four Amins have been taken by the Trial Court, the matter would have been different but in this case, virtually no opportunity has been given to the defendant to cross examine and test the genuineness of aforesaid





report.

11. In view of the aforesaid facts and circumstances, the appointment of a survey-knowing pleader Commissioner appears necessary for proper and complete adjudication of the matter at the appellate stage, particularly keeping in view of this fact that an appeal is a continuation of the suit. However, it is also evident that the defendant failed to avail such opportunity at the stage of trial. Accordingly, while allowing the prayer for appointment of a survey-knowing pleader Commissioner, a cost of Rs. 5,000/-(five thousand) is imposed upon the defendant–appellant (petitioner herein), payable to the respondent within a period of one month from the date of receipt/production of this order.

12. The learned Appellate Court is directed to appoint a survey-knowing pleader commissioner at the cost of the petitioner–appellant, who shall submit his report within a period of 15 days with respect to suit property i.e. encroached land as mentioned in the suit property. The learned Appellate Court is further requested to dispose of the present appeal within a period of two months from the date of receipt/production of this order. Both parties are also directed to extend full cooperation to ensure expeditious disposal of the appeal.





13. Accordingly, the application stands allowed.

(S. B. Pd. Singh, J)

Ankit Kumar/-

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