
(2025) 10 JH CK 0042

Jharkhand HC

Case No: Civil Miscellaneous Petition No. 330 Of 2024

Sujit Kumar Singh

APPELLANT

Vs

Smt. Ritu Devi

RESPONDENT

Date of Decision: Oct. 15, 2025

Acts Referred:

- Constitution of India, 1950 — Article 227
- Code of Civil Procedure, 1908 — Order 26 Rule 9

Hon'ble Judges: Gautam Kumar Choudhary, J

Bench: Single Bench

Advocate: Rohit Roy, Tarun Kumar Mahato, Vibhor Mayank, Shubham Kumar, Roshan Kumar Singh, Lukesh Kumar, Jai Shankar Tripathi, Amandeep Kumar Pandey

Final Decision: Allowed

Judgement

Gautam Kumar Choudhary, J

1. Instant civil miscellaneous petition has been filed by defendant nos.2 and 3 for setting aside the order dated 09.01.2024 passed in O.S.No.2268/2020 by which Survey Knowing Pleader Commissioner has been appointed for : -

I. Measurement of area of property in Schedule B i.e. purchased vide registered Sale Deed No.6108/5259 dated 25.06.2015.

II. Measurement of area of property mentioned in Schedule C.

III. Whether any construction has been made on Schedule C property by the defendants?

2. Plaintiff filed the suit for the following reliefs: -

- A. Decree for declaration of plaintiff's right, title and interest over Schedule C land and for a further declaration that the defendants have not acquired right, title or interest over Schedule C land.
- B. A decree for recovery of possession with direction to the defendants to remove the wall, structures, etc. from Schedule C land and restore the possession over Schedule C land.
- C. A decree for permanent injunction against the defendants restraining them from raising any structure or create any obstruction on Schedule C land.
3. Plaintiff claims to have acquired right, title and interest over Schedule B land measuring an area 2.5 Katha or 4.13 decimals by virtue of registered Sale Deed No.6108/5259 executed on 25.06.2015 from Rita Raha and Saswat Raha.
4. It is admitted by the plaintiff in para 8 of the plaint that defendant no.2- Ranjana Singh purchased second portion (leaving the stretch of 4 ft. wide x 61 ft. long adjacent to the Schedule B land) from defendant no.1 vide registered Sale Deed No.5531/5096 dated 27.07.2018 for an area measuring 2.34 Katha or 3.87 decimals over which the constructed house stands in the land.
5. It is claimed by the plaintiff that Schedule C constituted part of the land purchased by them and was left on the southern portion as passage.
6. The main case of the plaintiff is that defendants have encroached over Schedule C land making construction for which the suit has been filed.
7. It is argued by the learned counsel on behalf of the petitioners/defendants that Schedule C land was not purchased by the plaintiff which will be evident from para 5 of the plaint. The claim is rather based on easementary right as asserted in para 11 of the plaint.
8. Furthermore, defendant no.1 who is the coparcener of the vendor of the plaintiff, has already filed a written statement making specific averment Schedule C land was not sold by defendant no.1 to the plaintiff nor did she ever agreed to sell that portion to the plaintiff.
9. It is further argued that Survey Knowing Pleader Commissioner cannot be appointed for collection of evidence on behalf of the other side. Here in the present case, when even issue has not been framed, Survey Knowing Pleader Commissioner has been appointed for measurement of Schedule property. It is submitted that the easementary right cannot be claimed by the plaintiff as she is purchaser of the land as on 2015 and at no point of time such a claim has been asserted by her within 20 years in view of the ratio laid down by the Apex Court in *Manisha Mahendera Gala & Others Vs. Shalini Bhagwan Avatramani & Others*, (2024) 6 SCC 130.
10. It is submitted by the learned counsel on behalf of the plaintiff/opposite parties that appointment of Survey Knowing Pleader Commissioner has been made for physical verification of

the area purchased by the plaintiff and not of the defendants. Learned counsel has relied on a decision in the case of *Ram Sanjiwan Choudhary Vs. Arun Kumar Rai & Others*, 2023 Supreme (Pat) 1403, wherein it has been held that Survey Knowing Pleader Commissioner can be appointed for local investigation or for the purpose of elucidating any matter in dispute and his report can be relied upon by the court or may be rejected by it. The report is only an opinion and not a finding.

11. Having considered the submissions advanced on behalf of both sides, it is evident that main dispute in the suit before the learned trial Court is over a strip of land measuring 4 ft. wide x 61 ft. long adjacent to the Schedule B land. Rival claims are being made on behalf of both sides over it.

12. Main point for consideration is whether the appointment of Survey Knowing Pleader Commissioner suffers from any infirmity when the trial has not even commenced, so as to warrant interference in exercise of power under Article 227 of the Constitution of India.

13. The main object of a Survey Knowing Pleader Commissioner appointed under Order XXVI Rule 9 of C.P.C. is to enable the Court to properly and effectively appreciate the evidence with regard to local conditions, physical features, measures, boundaries, possessions, identification of property, or extent of encroachment which cannot be conveniently proved by oral or document evidence alone. When such facts are in dispute then a Survey Knowing Pleader Commissioner is appointed who acts as an officer of the Court, ensuring impartial fact finding which reduces conflicting or exaggerated oral evidence from the parties. It cannot be appointed for collection of evidence for either side.

14. As regards the stage of a suit or proceeding at which a Survey Knowing Pleader Commissioner may be appointed, there is no express bar against such appointment before the framing of issues. However, since the primary purpose of appointing a Survey Knowing Pleader Commissioner is to assist the Court in elucidating matters of fact that remain unclear despite the evidence adduced by both sides, such appointment should ordinarily not be made at the threshold of the trial. It is only when the evidence on record fails to sufficiently clarify the disputed factual position, particularly concerning the physical features or possession, that the appointment of a Survey Knowing Pleader Commissioner becomes appropriate.

15. In the present case, even before the issues having been framed, the Survey Knowing Pleader Commissioner has been appointed. Question of encroachment over the land or his passage or dominant heritage for common enjoyment has been encroached by the defendants can arise, only after the plaintiff has lead evidence proving title over the land in question.

16. Under the circumstance impugned order is set aside.

Civil Miscellaneous Petition is allowed. Pending Interlocutory

Application, if any, is disposed of.