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**(2011) 07 JH CK 0031**

**Jharkhand High Court**

**Case No:** Writ Petition (C) No. 3111 of 2009

| | | |
|---|---|---|
| Kamal Kisto Pradhan | | APPELLANT |
| | Vs | |
| Netro Pradhan and Others | | RESPONDENT |

**Date of Decision:** July 26, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 26 Rule 9, 151

**Citation:** (2011) 4 JCR 316

**Hon'ble Judges:** Prashant Kumar, J

**Bench:** Single Bench

**Final Decision:** Allowed

**Judgement**

@JUDGMENTTAG-ORDER

Prashant Kumar, J.
This writ application filed against the order dated 27.6.2009 in Title Suit No. 20 of 2008 by learned Munsif, Chaibasa whereby the application of petitioner under Order XXVI, Rule 9 read with Section 151 of the CPC has been rejected.

2. The case of the plaintiff/petitioner is that he purchased schedule A land by two sale-deeds bearing Nos. 402 and 403 dated 5.3.2004. The further case of the plaintiff is that the defendants encroached a portion of land of Schedule A land as their land also situates adjacent to Schedule A land. Accordingly the petitioner/plaintiff filed a suit for evicting the defendants from the aforesaid portion of Schedule A land, (details of which given in Schedule B to the plaint).

3. It is submitted by Sri Milan Kumar Dey, learned counsel for petitioner/plaintiff that the dispute between the parties is with respect to demarcation of land, therefore it is in the interest of justice that a pleader commissioner be appointed for ascertaining exact location of encroached portion of Schedule A land. It is submitted that learned Court

below had mainly rejected his application because evidences on behalf of all the parties has been closed. It is submitted that Hon''ble Supreme Court in SLP No. 7510 of 2007, Haryana Waqf Board v. Shanti Swaroop and others, had laid down that if there is a controversy between the parties with respect to demarcation of land, it is always in the interest of justice to appoint a pleader commissioner for ascertaining the exact demarcation of suit land.

4. Sri Indrajeet Singh, learned counsel appearing for respondents submits that during the cross-examination, some facts came in favour of defendants and petitioner with a view to wash it off filed application for appointment of pleader commissioner. Under the said circumstance, at belated stage, it is not in the interest of justice to appoint pleader commissioner.

5. From perusal of plaint and written statement of the present case (produced by learned counsel for the parties), I find that the real controversy between the parties is whether Schedule B land is the part and parcel of Schedule A land. It is stated by the plaintiff in the plaint that entire Schedule A land (including Schedule B land), purchased by him by two sale-deeds and out of the aforesaid purchased land, defendants encroached land, details of which given in Schedule B land. From perusal of written statement, I find that defendants at paragraph No. 14 has stated that exact location of Schedule B land is not clear. It is further stated that it has not been made out as to whether the Schedule B land forms part and parcel of the Schedule A land. Thus, in my view, as per law laid down by their Lordship of Hon''ble Supreme Court in aforesaid decision, in the instant case, it is necessary that a pleader commissioner, be appointed for locating the exact demarcation of suit land as well as to ascertain whether the suit land i.e. Schedule B property) is the part of Schedule A property?

6. Accordingly, I allow this application and quash the impugned order and direct the Court below to appoint survey knowing pleader commissioner to demarcate Schedule A land, which was purchased by the plaintiff/petitioner by two sale-deeds and also report whether Schedule B land is part of Schedule A land?