

(2005) 04 PAT CK 0082
In the Patna High Court
Case No : Civil Revision No. 1900 of 2004

Ram Shekhar Singh

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 08-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10

Citation : (2005) 2 PLJR 524

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Mahesh Narayan Parbat, Ved Prakash Srivastava and Praveen Kumar, for the Appellant; Kaushlendra Kumar Sinha for O.P. Nos. 1 to 3 and Mr. Ram Sumiran Singh for O.P. No. 4, for the Respondent

Judgement

S.N. Hussain, J.—Heard Learned Counsel for the petitioner, Learned Counsel for opposite party Nos. 1 to 3-State Bank of India and Learned Counsel for opposite party No. 4. The petitioner is plaintiff of Title Suit No. 197 of 1999, which he had filed for eviction of the tenant (Bank) and for realisation of arrears of rent etc.

2. The petitioner is aggrieved by order dated 2.11.2004 parsed in the aforesaid suit, by which the learned Subordinate Judge-I, Begusarai rejected his petition under Order XXVI Rule 10 of the CPC for appointment of survey knowing Pleader Commissioner for measurement and investigation of the disputed premises.

3. The short fact of this case is that the said suit was filed by the petitioner for eviction of the State Bank of India from the suit premises, but later opposite party No. 4 intervened and was added as a defendant. It also transpires that the plaintiff claims to have purchased the suit premises in auction sale, whereas the State Bank of India was a tenant from before the auction purchase. Later during the pendency of the suit authorities of the State Bank of India vacated the suit premises and deposited the keys thereof in the court. Hence they had no interest left in the suit premises and, as such, Learned Counsel for the State Bank of India appearing in this case submits that he has no concern with the case now.

4. Since the plaintiff claims to have auction purchased the suit premises standing on 5 Kathas of land, out of 7 Kathas and 2 Dhurs of the entire plot and also since the State Bank of India was a tenant of the suit premises from before the auction purchase, it is quite natural that the plaintiff might not be aware of the full configuration of the suit premises. Hence to avoid the vagueness and to come to a definite conclusion about the actual physical position of the suit premises, it is necessary that a Pleader Commissioner should have been appointed by the learned court below to report about the exact position of the suit premises specially in view of the claim raised by the intervenor-defendant, namely, opposite party No. 4.

5. In the aforesaid circumstances, I set aside the impugned order and direct the learned court below to appoint a survey knowing Pleader Commissioner for the purpose mentioned above directing him to submit his report without any undue delay and thereafter to dispose of the matter expeditiously. With the above directions this civil revision is allowed.