

(1951) 08 PAT CK 0008
In the Patna High Court
Case No : Civil Revision No. 141 of 1951

Ramkirpal Missir and Others

APPELLANT

Vs

Maresh Pandey and Others

RESPONDENT

Date of Decision : 10-08-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9, 115

Citation : AIR 1952 Patna 137

Hon'ble Judges : Lakshmikanta Jha, C.J

Bench : Single Bench

Advocate : A.B.N. Sinha, for the Appellant; K. Rai and Kamleshwar Prasad Sinha, for the Respondent

Final Decision : Allowed

Judgement

Lakshmikanta Jha, C.J.—This is an application u/s 115 of the CPC directed against an interlocutory order of the Munsif, 1st Court, Buxar The learned Munsif has ordered appointment of a commissioner to make local investigation under Order 26, Rule 9, Code of Civil Procedure, and has asked, the Commissioner to follow certain directions in making measurement of certain lands which are not within the scope of the suit. In order to appreciate the point raised before me I may shortly state the facts of the case which are as follows : The present defendants instituted a suit for a declaration that certain persons who claimed to be members of the family of the present plaintiffs have made encroachments on the defendants' lands namely, plots 440 and 438, by constructing two rooms thereon. It may be stated that the present plaintiffs were not parties to that suit, but the defendants, who were plaintiffs in the previous suit, succeeded up to the High Court and it was held that the two rooms, which are the subject-matter of dispute now, were encroachments on plots 440 and 438. When the defendants started the execution, the present plaintiffs brought the suit for a declaration that the rooms really belonged to them and that the decree in the earlier suit is not binding on them because they were not parties to the suit. They have

accordingly sought a declaration that the decree is not effective against them and have also asked for a perpetual injunction.

2. The plaintiffs applied for the issue of a commission for measurement of certain land. Their case was that plot No. 439 belongs to them whereas plots 440 and 438 belong to the defendants. According to them, the two rooms, which are the subject-matter of the suit, are on plot No. 439 and not an encroachment on the defendants' plots 440 or 438. The plaintiffs have now applied for issue of a commission and prayed that a commissioner be appointed to find out by measurement

(1) what is the width of the lane lying north of the plaintiffs' house situated on plot No. 435, and

(2) if defendants have encroached in the said lane as well. I may state that the plaintiffs applied for issue of commission on two previous occasions, but they failed. But their third attempt succeeded and the learned Munsif was persuaded to appoint a commissioner and to measure the width of the lane lying north of the plaintiffs' house and to find out if the defendants have made any encroachment. These points are extraneous to the suit and, in my opinion, beyond the scope of enquiry under Order 26, Rule 9, Code of Civil Procedure. The

order of the learned Munsif does not appear to be one to promote the ends of justice but to hamper justice. I may, in this connection, quote the observation of Dawson Miller, C. J. in "Ramji Bam v. Bamasre Raut", AIR 1924 Pat 761, which is quite appropriate so far as the present case is concerned. His Lordship observed : "The only question is whether we should interfere in revision or under our powers of superintendence to prevent what, in my opinion, would be a calamitous waste of time and money if an enquiry on the lines suggested by the learned Subordinate Judge were to take place." I think it will be in the present case an equally calamitous waste of time and money if a roving enquiry like that as ordered, by the Munsif is made. The order of the learned Munsif, is, therefore, set aside; and if the learned Munsif feels that if, is necessary that a commission should issue he should strictly follow the provisions of Order 26 Rule 9, Code of Civil Procedure.

3. The application is, therefore, allowed with costs and the order of the learned Munsif set aside: hearing fee one gold mohur.