

1. Ram
Barwa,
2. Bihari
Areraj,
3. Pradip
P.O. Areraj,
1. Moti
P.O. Barwa,
2. Palta

.... Petitioners.

1. Motilal Pandit Son Of Late Surat Pandit Resident Of Village Bahadurpur P.O. Bahadurpur P.S. Gobindganj, District- East Champaran.
2. Paltan Pandit Son Of Late Sukhal Pandit Resident Of Village Bahadurpur P.O. Bahadurpur P.S. Gobindganj, District- East Champaran.
3. Moti Rani Wife Of Bachhan Pandit D/O Late Surat Pandit Resident Of Village And P.O. Sewrakha, P.S. Harsidhi, District- East Champaran.
4. Jaga Rani Wife Of Chandrika Pandit Daughter Of Late Surat Pandit Resident Of Village Bathna P.O. Bathna P.S. Gobindganj, District- East Champaran.
5. Rukmini Devi Wife Of Manchan Pandit Daughter Of Late Sheo Shankar Pandit Resident Of Village Hardia P.O.- Turkaulia, P.S. Turkaulia, District- East Champaran.
6. Jagrup Pandit Son Of Late Ram Hit Pandit Resident Of Village Shankar Saraiya, P.O. Madhopurtan- Saria, P.S. Turkaulia District- East Champaran.
7. Dhanai Pandit Son Of Late Ram Hit Pandit Resident Of Village Shankar Saraiya, P.O. Madhopurtan- Saria, P.S. Turkaulia District- East Champaran.

.... Respondents.

For the Petitioner/s : Mr. Sunil Kumar No. III
For the Respondent/s : Mr.

4 24-11-2015 Heard the learned counsel for the petitioners and
the learned counsel for the respondents.

Calling in question the order passed by the appellate court below accepting the document (voter list) filed on behalf of the appellants as additional evidence, the present application under Article 227 of the Constitution of India has been

filed.

The facts are not in dispute that during the pendency of the Title Appeal No.06/2006 a petition was filed on 25.04.2012 on behalf of the appellants seeking to adduce the certified copy of the voter list as additional evidence. By the impugned order the appellate court below has allowed the prayer of the appellants after imposing a cost of Rs. 5,000/- and has accepted the said certified copy of the voter list as additional evidence.

The learned counsel for the petitioners has submitted that the learned court below has committed error of jurisdiction in accepting the additional evidence without considering the requirement of the same in presence of the evidence already on record. It has been canvassed that the additional evidence cannot be permitted to fill up the lacuna in the case and should not have been allowed in a casual manner.

On the other hand, it has been mainly submitted by the learned counsel for the respondents that the present application is not maintainable as the petitioners have accepted the cost which was a condition precedent for the order. It has further been also emphasized that the present application be dismissed after imposing heavy cost on the petitioner.



In the case of ***Union of India Vs. Ibrahim Uddin***, ***2013(1) PLJR (SC) 48***, the apex court has laid down the principles governing the ambit and scope of the provision as contained in Order 41 Rule 27 C.P.C. and also the stage to consider the prayer for adducing additional evidence. It has been ruled as follows:-

“25.... The general principle is that the Appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 CPC enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment...”

“38.... An application under Order XLI Rule 27 CPC is to be considered at the time of

hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved...

“41... Thus from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/ inexecutable and is liable to

be ignored...”

Tested on the anvil of the above dictum, it is manifest that the appellate court has committed material irregularity in allowing the prayer for adducing additional evidence which prayer was required to be considered only at the time of final hearing of the appeal at the stage when after appreciating the evidence on record, the court could have reached the conclusion relating to the requirement of the additional evidence. Such order is, thus, inconsequential/inexecutable and is liable to be ignored. As a necessary corollary, it also follows that the acceptance of the cost by the counsel of the petitioner would not be sufficient to cure the inherent irregularity and place the order beyond reproach.

Accordingly, this application is allowed and the impugned order is ignored with direction to the appellate court below to consider the prayer of the appellant for adducing additional evidence, in accordance with law laid down by the apex court in ***Ibrahim Uddin (Supra)***, at the appropriate stage of hearing of the appeal. In the peculiar facts and circumstances of the case, however, this order is made subject to refund of the amount of cost of Rs. 5,000/-by the petitioner to the respondents (appellants in the court below) within a period of eight weeks from

today.

The writ application is allowed with above

directions.

(V. Nath, J)

Nitesh/-

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