

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2768 of 2015

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1. Khursheeda Khatoon wife of late Md. Amin khan@Aminuddin, resident of Hazi Manzil, P.S.- Kankarbagh, District- Patna.
 2. Mishahuj Jahan Kamni wife of Md. Ejajuddin , Daughter of Late Aminuddin, resident of Bhusaula Danapur, P.S- Phulwarisharif , District- Patna at present Haji Manzil , Kankarbagh, P.S- Kankarbagh, Distt- Patna.
 3. Atishujjahan khair wife of Md. Salam Iraqui Daughter of Late Amin Khan@Aminuddin resident of Raipura, Zidgahpar, P.S. - Fatuah, Distt- Patna.

.... Petitioner/s

Versus

1. Hasan Imam Son of Late Abdul Sakoor.
2. Md. Shamsher Imam
3. Md. Tanveer Imam
4. Md. Javed Imam
5. Md. Shams Tabrej Imam
6. Jafar Eqbal Imam Resp. No. 2 to 6 sons of Hasan Imam All Resident of Mohalla- Chhoti Khagaul, P.S. Khagaul, Distt- Patna.
7. Md. Naeem
8. Md. Khursid
9. Md. Akhtar.
10. Md. Nazir All sons of Late Abdul Hakim resident of village- Murghiachak, P.S.- Phulwarisharif, Distt- Patna.
11. Uman Singh son of Gorelal Singh resident of Mohalla- Kankarbagh, P.S- Kankarbagh, Distt- Patna.
12. Abhay Kumar son of Sri Baijnath prasad resident of 47, Dr. Sundary Mohan Avenue, P.S.- Bania Kuker, Distt- 24, Pargana at Present Kankarbagh Road, Patna- 20.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Srivastava

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

Date: 26-03-2015

Heard the learned counsel for the parties.

Taking exceptions to the order by which the prayer of the petitioner-respondents in appeal in the court below to adduce some documents in additional evidence has been rejected, the present application under Article 227 of the Constitution has been filed.

The facts are not in dispute that the petitioners were the plaintiffs in the suit which was decreed in their favour. The defendants have filed the appeal against the said judgment and decree. The present petitioners have been impleaded as respondents. During the pendency of the appeal, the present petitioners filed a petition praying for adducing some documents which have come in existence after passing of the judgment and decree of the trial court, in evidence. The appellate court below by the impugned order has rejected the prayer holding that the court does not require those documents as envisaged under Order 41 Rule 27 (B).

The learned counsel for the petitioners has submitted that the appellate court below has come to that conclusion without looking into those documents and, therefore, the order passed by the learned court below suffers from material irregularity.

After careful consideration of the matter and the submissions on behalf of the petitioners, this Court is not inclined to

interfere with the impugned order. It is well settled that the power to accept additional evidence as envisaged under Order 41 Rule 27 C.P.C. is circumscribed by the conditions provided therein. From the averments made in the petition filed before the court below by the petitioners, it is manifest that the two documents sought to be adduced in evidence are the orders passed by the civil court and the additional collector, during the pendency of the appeal and the petitioners have clearly pleaded that those documents would enable the court to pronounce proper judgment. Such prayer manifestly come within the purview of Order 41 Rule 27 (1) (b). However, the court below after considering the nature of the document has concluded that the two documents would in no way have bearing upon the rival claim of title by the parties. During the course of submission, it could not be established as to how the order dismissing an eviction suit for default and the order passed in revenue case be relevant for the appellate court to pronounce judgment particularly when the petitioners have succeeded in the suit on the basis of the evidence already adduced by them.

This writ application has thus no merit and it is dismissed accordingly.

Devendra/-

(V. Nath, J)

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