

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.269 of 2014

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Most. Jageshwari Devi

.... Petitioner/s

Versus

Bhubneshwari Devi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hriday Narayan Harshit

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 14-12-2015 Heard the learned counsel for the petitioner and the
learned counsel for the respondent on I.A. No.9600 of 2015.

This I.A. has been filed by the heirs of the sole
petitioner for being substituted in place of the deceased sole
petitioner who died on 28.11.2015.

The learned counsel for the respondent has got no
objection. Accordingly, this application is allowed and the legal
representatives are substituted in place of the deceased sole
petitioner.

Heard the learned counsel for the petitioner and the
learned counsel for the respondent on merit in admission matter.

By the impugned order dated 20.09.2013 passed in Title
Appeal No.1 of 1998, the learned 1st Additional District Judge,
Madhubani rejected the application filed by the present petitioner
under Order 41 Rule 27 C.P.C.



It appears that plaintiff-respondent filed Title Suit No.32 of 1992 for declaration of title and confirmation of possession and also for recovery of possession. The suit was decreed by the trial Court. Thereafter, the defendant-petitioner filed Title Appeal No.1 of 1998. Earlier the appellate Court allowed the appeal and remanded the matter to the trial Court. Against the said remand order, the plaintiff-respondent filed Misc. Appeal No.100 of 2003 before the High Court. On 12.07.2010, before the High Court, both the parties conceded that no more evidence is required to be adduced by either side and, therefore, on their concession, this Court set aside the remand order passed by the appellate Court and directed the lower appellate Court to decide the appeal within six months. Thereafter, the petitioner has filed this application under Order 41 Rule 27 for adducing additional evidence i.e. seeking permission to adduce khatiyani and one sale deed as additional evidence. The Court below by the impugned order has rejected this application.

It is settled principles of law that the parties are not entitled as of right to the admission of additional evidence when on the basis of evidence on record, the appellate Court can pronounce a satisfactory judgment. If on the basis of evidences available on record, the appellate Court can pronounce

satisfactorily, the provision as contained in Order 41 Rule 27 C.P.C. will not apply.

It is also settled principles of law that in absence of satisfactory reasons for non-production of the evidence in the trial Court, additional evidence should not be admitted in appeal and it is only where for any other substantial cause, the appellate Court requires additional evidence that this rule is applicable. In the present case, before the High Court the petitioner conceded that no further evidence is necessary and the parties will not adduce any further evidence and on this concession, the matter was remanded to the Court below.

From perusal of the impugned order, it appears that the Court below found that this petitioner has filed this application only with a view to delay the disposal of the appeal.

In view of the above facts and circumstances of the case, in my opinion, in supervisory jurisdiction under Article 227, the impugned order cannot be interfered with.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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