

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9246 of 2011

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Hari Singh Deo Singh

.... Petitioner/s

Versus

Fuleshwar Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhas Ranjan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

13 24-11-2015

Heard learned counsel for the petitioner.

Perused the order impugned.

While Title Suit was being sailed at the instance of the petitioner before the learned lower Court in ex parte manner on account of absence of defendants, even then, the petitioner/ plaintiff failed to discharge his obligation by proving the deed of gift, on the basis of which plaintiff had claimed title, possession over the land to be a valid document executed by Most. Bauwabati Devi.

On account of some sort of discrepancy, which the learned lower Court perceived after perusal of the gift, came to the conclusion that L.T.I. of executant was taken first and then, the recitals were incorporated whereupon doubted over genuineness of the document and dismissed the suit against which Title Appeal No.01 of 2005 has been brought up at the instance of petitioner/ plaintiff/ appellant.

Unfortunately, the Title Appeal No.01 of 2005 is also going with some sequence. However, during midst thereof, a petition was filed on behalf of appellant/ petitioner under Order-41, Rule-27 of the C.P.C. to allow him to have the L.T.I. of deed of gift examined by a handwriting expert/ finger print expert in order to substantiate his claim.

For better appreciation, Order-41, Rule-27 of C.P.C. is incorporated with:-

“27. Production of additional evidence in Appellate Court-(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which out to have been admitted, or
Inserted by the Code of Civil Procedure (Amendment) Act, 1976, S.87 (w.e.f. 1-2-1977).[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any

document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission”.

From plain reading of Order-41, Rule-27 of C.P.C., it is evident that two kinds of categories have been identified in order to appreciate the theme of additional evidence. Under Sub-rule-I, an opportunity has been given to the party while under Sub-rule-2, the power is vested to the Court. Under Sub-rule-1, two categories have been identified, the first one whereunder learned lower Court had refused to accept the evidence and the second one when after due diligence, the parties failed to procure the evidence. The case of the petitioner admittedly did not come within the aforesaid two categories and on account thereof, I do not see any cogent reason to interfere with the order impugned.

Consequent thereupon, instant petition is rejected.

(Aditya Kumar Trivedi, J)

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