

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1032 of 2016**

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Yamuna Pandey

.... Appellant/s

Versus

Lalan Singh & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bhola Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 08-11-2016

Heard learned Senior counsel, Mr. Alok Kumar Sinha

appearing for the petitioner.

2. Perused the impugned order dated 06.06.2016 passed by the learned Additional District Judge-IV, Aurangabad in T.A. No. 23 of 2012/04 of 2013, whereby the application filed by the appellant-petitioner under Order 41 Rule 27 of the Code of Civil Procedure has been dismissed.

3. Learned Senior counsel for the petitioner submitted that during the trial application was filed before the trial court for receiving the documents in evidence but the court below observed that the same shall be considered at the time of hearing of the suit. The suit was allowed and thereafter the defendant-petitioner filed title appeal before the court below and before the court below again Order 41 Rule 27 C.P.C. application was filed but the court below observed that the documents are not relevant documents

and without considering the fact that in the trial court already application had been filed by the petitioner rejected the application.

4. Perused the impugned order. It appears that the court below after considering the submission of the appellant before the lower appellate court and considering the provision under Order 41 Rule 27 C.P.C. held that the documents, which are sought to be admitted in evidence as additional evidence, are revenue papers which are either post litem or insignificant for the purposes of the adjudication of the case. There are other evidences on record for the purposes of adjudication of matter in controversies between the parties i.e. title and possession and the documents sought to be admitted in evidence are not relevant for deciding the question of title and possession.

5. So far the submission of learned Senior counsel for the petitioner that the application was filed before the trial court for receiving the document in evidence is concerned, it may be mentioned here that annexure-4 is the application under Order 41 Rule 27 C.P.C. filed before the lower appellate court. At paragraph-1 of the application itself, the appellant, who is petitioner, herein, has specifically mentioned that after passing of the judgment of Title Suit No. 86 of 2007 on 28.02.2012, the

petitioner has become able to procure the documents after great effort and then the description has been given regarding documents.

6. The Hon'ble Supreme Court in the case of *Union of India Vs. Ibrahimuddin reported in 2013 (1) PLJR 48 SC = 2012 (8) SCC 148* has held that 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.

7. In the present case, as has been stated above, the court below clearly recorded that there are evidences on record to pronounce the judgment regarding title and possession and the documents, which are sought to be adduced as additional evidence, are not relevant at all for deciding the question of title and possession. It is settled principles of law that the revenue record neither creates title nor extinguish title. Therefore, only

because some applications were filed in the court below, which was disposed of observing that the same shall be considered at the time of hearing of the suit, Order 41 Rule 27 will not be attracted.

8. From perusal of the impugned order, it appears that the court below has passed a reasoned order considering the provisions of law and the case made out by the appellant in the application under Order 41 Rule 27 C.P.C. Therefore, it cannot be said that the order passed by the court below is in the manner not permitted by law or that it occasioned failure of justice or that the order passed by the appellate court is without jurisdiction. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

Brajesh/-

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(Mungeshwar Sahoo, J)