

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5166 of 2014

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1. Shreedhar Narain Choudhary @ Shridhar Narayan Chaudhary Son Of Late Rajendra Narain Choudhary, Resident Of Village And P.S.- Khirhar, District- Madhubani, Presently Residing At Mohalla- West Boring Canal Road, P.S.- Shri Krishnapuri, Town And District- Patna

.... Petitioner/s

Versus

1. Upendra Jha Son Of Late Vedanand Jha, Resident Of Mohalla- Station Road, Madhubani, Ward No. 15, P.S. And Town And District- Madhubani, Recently Residing At Village- Deohar, P.S.- Andhratharhi, District- Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Vikash Kumar Sharma
	: Mr. Murari Narain Chaudhary
	: Mr. Vijay Kumar
	: Mr. Mohit Srivastava
For the Respondent/s	: Mr. Ratnakar Jha

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

13 04-01-2016 Heard Mr. Vikash Kumar Sharma, learned counsel appearing on behalf of the petitioner and Mr. Ratnakar Jha, the learned counsel appearing for the respondent.

This application, under Article 227 of the Constitution of India, has been filed by the defendant-respondent-petitioner against the order dated 10.01.2014 passed by the learned Additional District Judge-III, Madhubani, in Title Appeal No. 39 of 2012, whereby the lower appellate court had allowed the application filed by the respondent herein for appointment of Pleader Commissioner under Order 26 Rule 9 C.P.C.



Learned counsel for the petitioner submitted that the plaintiff-respondent filed title suit for declaration of title with respect to two (2) Kathas of land in C.S. Plot No. 570 on the ground of settlement by ex-landlord. The defendant appeared and filed written statement and counter claim praying for eviction of the plaintiff from the suit premises i.e. two (2) Khatas of land of C.S. Plot No.570 including the other two plots being Plot Nos. 567 and 577. The trial court dismissed the Title Suit No. 53 of 2000 and decreed the counter claim filed by the defendant-petitioner herein. Thereafter the plaintiff filed Title Appeal No. 39 of 2012. The appellant after conclusion of hearing of the title appeal filed application under Order 26 Rule 9 C.P.C. praying for appointment of Pleader Commissioner and the lower appellate court allowed the said application in the manner not permitted by law, thereby, grave injustice has been caused to the present petitioner as there has already been direction of this Court in various writ applications for expeditious disposal of the title appeal. Learned counsel further submitted that while allowing the application, the lower appellant court has not considered the well settled principles of law laid down by the Hon'ble Supreme Court in connection with adducing of additional evidence under Order 41 Rule 27 C.P.C.

The learned counsel further relied upon the decision of the Supreme Court reported in *AIR 1951 SC 193* and also the subsequent decisions of the Hon'ble Supreme Court reported in *AIR 1963 SC 1526*, *AIR 1965 SC 1008* and also a recent decision of the Hon'ble Supreme Court reported in *2013 (1) PLJR 48 SC*.

On the other hand, learned counsel for the respondent submitted that in the counter claim, the defendant claimed for eviction from all the three plots and filed indenture, wherein plot number has been mentioned as Municipal Survey Plot No. 8217 and, therefore, lower appellate court found it essential to see as to from which part of three plots, this plot has been carved out.

Perused the order passed by the court below.

It is admitted fact that the petitioner in the counter claim specifically pleaded that he had purchased the suit property but in the title deed, boundary has been described correctly but so far plot number is concerned, mistake has been done. Now, therefore, in view of this stand of the defendant-petitioner, whose counter claim has been allowed, there is no dispute regarding the identity of the suit property because the plaintiff-respondent is claiming title over two Khatas of Plot No. 570 and the counter claim has been filed for eviction of the plaintiff from this very land. The lower appellate court nowhere has held that on the basis of the



evidence available on record, the appellate court is not able to pronounce the judgment. The Hon'ble Supreme Court in the case of *Union of India Versus Ibrahim Uddin and another* reported in **2013(1)PLJR 48 SC** 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 an appeal. However, as an exception Order 41 Rule 27 C.P.C. 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, the provision does not apply when on the basis of evidence on record, the appellate court can pronounce a satisfactory judgment. Here in the present case, only dispute between the parties is whether the plaintiff has got title on the suit property measuring two (2) Khatas of land of C.S. Plot No. 570 and according to the defendant whether he is the owner of the suit property and have inducted the plaintiff as tenant in the suit premises. It is not the case found by the lower appellate court that because of the fact that the trial court has not identified the land and the appellate court is unable to pronounce judgment satisfactorily. It appears that while passing the order the court

below has only borrowed the language of provisions of Order 41 Rule 27 of the C.P.C. In my opinion, therefore, the court below has passed the impugned order in the manner not permitted by law and against the principles laid down by the Hon’ble Supreme Court in various decisions cited by the learned counsel for the petitioners, therefore, the impugned order is unsustainable in the eye of law.

In the result, this writ application is allowed and the impugned order is set aside. The lower appellate court is directed to dispose of the appeal expeditiously.

Brajesh/-

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(Mungeshwar Sahoo, J)