

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.919 of 2016**

Marwari College

.... Appellant/s

Versus

Nirmal Kumar Daftri & Ors

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Raj Kumar

For the Respondent/s : Mr.

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

- 3 19-12-2016 **1.** Heard the learned counsel, Mr. Ajay Kumar Singh for the petitioner and the learned senior counsel, Mr. Hemendra Prasad Singh for the respondent.
- 2.** This application under Article 227 of the Constitution of India has been filed by the defendant respondent petitioner for setting aside the order dated 18.07.2016 passed by learned Addl. District & Sessions Judge II, Kishanganj in Title Appeal No.13 of 1993 whereby the learned Court below rejected the application filed by the petitioner under Order 41 Rule 27 CPC.
- 3.** From perusal of the impugned order, it appears that the Court below rejected the application on the ground that how can there be two sale certificate with respect to the same property one in the year 1932 and the other in the year 1948.
- 4.** It appears that the petitioner filed the application under



Order 41 Rule 27 Annexure '2' contending inter alia to the effect that earlier an auction sale certificate written in Kaithi language was adduced in evidence as ext. 'A' issued on 22.09.1948. On getting it translated peculiar circumstance has surfaced and it has been noticed by the defendant that this sale certificate was not the one intended to have been filed. This mistake occurred due to inability of the pairvikar to read, the instrument scribed in Kaithi. It is further pleaded that from the recital made in sale deed dated 23.10.1963, it has been learnt that the concerned sale certificate was another one dated 4.5.1932 on which delivery of possession was effected. On further search in the office of the defendant, the auction sale certificate dated 4.5.1932 was also found and is being filed in original with its certified Hindi translated copy.

5. From perusal of the impugned order, it appears that this aspect of the matter regarding the correctness or otherwise of the statement made in the application was not considered by the Court below and only it is stated that how can there be two sale certificates with respect to one land? Order 41 Rule 27AA reads as under :-

“The party seeking to produce additional evidence, establishes that notwithstanding the exercise of due



diligence, such evidence shall 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.'

6. In the present case, according to the statements made in paragraph 5 of the application filed under Order 41 Rule 27, it is the mistake on the part of the petitioner because of the fact that the sale certificate, ext 'A', was written in Kaithi. Subsequently, on perusal of the sale deed, it could be detected and the original was found. Now, therefore, whether the ext. 'A' is the correct certificate or the original which is sought to be produced by the petitioner is relevant in the present case that has to be found out by the Court. Clause 'B' of Order 41 Rule 27 provides that '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.'

7. In view of this provision, if the Court requires the document for pronounce a satisfactory judgment and for any other substantial cause then also the Court has the jurisdiction to allow the party to produce additional evidence. The appellate Court nowhere considered this aspect of the matter.



8. The Hon'ble Supreme Court in the case *Union of India vs. Ibrahim Uddin 2013 (1) PLJR 48 (SC)* has held that at paragraph 30 'the words "for any other substantial cause" must be read with the word "requires" in the beginning of sentence, so that it is only where, for any other substantial cause, the appellate Court requires additional evidence, that this rule will apply.' At paragraph 36, it has been held that 'where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record such application may be allowed.' At paragraph 38, it has been held that 'an application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and / or the evidence sought to be adduced have any relevance / bearing on the issues involved. The admisibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate Court requires the evidences sought to be adduced to enable ii to pronounce judgment or for any other substantial cause. The true test,



therefore, is, whether the appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the Court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court.'

9. In the present case, it is the case of the petitioner that there is defect in the evidence itself. The original sale certificate is sought to be produced and it is stated that earlier it was filed in hand written because it was in Kaithi language. This aspect of the matter has been held that the Hon'ble Supreme Court has not at all been considered by the lower appellate Court. In my opinion, therefore, the Court below has proceeded to decide the application in the manner not permitted by law.

10. In the result, this Civil Misc. application is allowed. The impugned order is set aside. The matter is remanded back to the lower appellate Court with a direction that the application filed by the petitioner under Order 41 Rule 27 CPC read with Section 151 shall be considered at the time of argument of the Title Appeal No.13 of 1993.

11. It is made clear that the order impugned and this order



of the High Court shall not prejudice any of the party and likewise if any observation on merit is made shall also not influence the party or the Court.

(Mungeshwar Sahoo, J)

Sanjeev/-

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