

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2731 of 2015

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Umesh Prasad & Ors

.... Petitioner/s

Versus

Shivnandan Sah & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Saket Tiwary

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 25-02-2016 **1.** Heard the learned counsel, Mr. Saket Tiwary, for the petitioner.

2. By the impugned order dated 10.09.2014, the learned Addl. District Judge, Bettiah, West Champaran in partition Appeal No.67 of 2011 rejected the application under Order 41 Rule 27 CPC filed by the plaintiff appellant petitioner.

3. It appears that the plaintiff's suit for partition was dismissed. The plaintiff then filed the aforesaid title appeal. Thereafter, application under Order 41 Rule 27 was filed seeking permission to adduce additional evidence by producing the khatian. The Court below recorded finding that in this appeal, the question is whether the suit land was gifted by Jugal Sah and his wife to the defendant or not and whether the gift deed dated 31.10.1963 and 07.10.1985 are forged or not and for deciding this question, the khatian is not required and

accordingly rejected the application.

4. The Hon'ble Supreme Court in the case of *Union of India vs. Ibrahim Uddin 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 additional evidence in appeal. However, as an exception, Order 41 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 these 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. The matter is entirely within the discretion of the Court and is to be used sparingly.'

5. In view of the above settled proposition of law and finding recorded by the lower appellate Court, I do not find any reason to interfere with the impugned order in supervisory jurisdiction under Article 227 of the Constitution of India.

6. Accordingly, this writ application is dismissed.

Sanjeev/-

(Mungeshwar Sahoo, J)

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