

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6915 of 2016

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Kashyap Rakesh Kumar @ Rajoo & Ors

.... Petitioner/s

Versus

Dr. Birendra Kishore & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shri Prakash Srivastava

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 15-12-2016 Learned counsel Mr. Shri Prakash Srivastava for the petitioners submitted that the learned court below by the impugned order rejected the application under Order 41 Rule 27 CPC filed by the petitioners in title appeal for seeking permission to adduce additional evidence only on the ground of delay and that the two documents are photocopies. The court below nowhere discussed as to whether the documents sought to be produced by the petitioners as additional evidence are necessary documents for determination of the controversies between the parties nor the court below considered the fact that the petitioners were minors when the trial of the suit was going on. According to the learned counsel, the court below should have decided the application at the time of hearing of title appeal itself but without considering the settled principles of law laid down by the Supreme Court rejected the same on technical ground.



It appears that notices were issued earlier to the respondents by order dated 12.07.2016. In spite of service of notice on the respondents nobody appeared.

From perusal of the impugned order, it appears that the court below nowhere decided the relevancy or otherwise of the documentary evidences sought to be produced as additional evidence. The Hon'ble Supreme Court in the case of **Union of India Vs. Ibrahim Uddin & Anr., reported in 2013 (1) P.L.J.R. 48 SC = (2012) 8 Supreme Court Cases 148** has held at paragraph 41 that it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In the present case, the court below has not decided the relevancy or otherwise of documents on merits. The application has been rejected on technical ground. So far the ground that two of the documents sought to be produced by the petitioners are photocopies is concerned, it may be reiterated that this court in **2002 (2) P.L.J.R. 772** has held that genuineness and relevancy



have to be considered along with other evidence at proper stage. Admission of document does not mean that document has to be treated as a genuine document.

In my opinion, therefore, the court below has rejected the application filed by the petitioners on untenable grounds and thereby it occasioned failure of justice. Accordingly, I allow this writ application and set aside the impugned order dated 15.02.2016 passed by 2nd Additional District Judge, Muzaffarpur in Title Appeal No.94 of 1996 and remand the matter to the court below for hearing the application for additional evidence filed by the petitioners under Order 41 Rule 27 of the Code of Civil Procedure along with the appeal itself as laid down by the Supreme Court in the case of **Union of India** (supra).

Harish/-

(Mungeshwar Sahoo, J)

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