

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.62 of 2016**

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Md. Salim

.... Appellant/s

Versus

Bibi Sabana & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Subhash Kumar Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 19-05-2016

Heard the learned counsel, Mr. Ranjan Kumar Jha for the petitioner and the learned senior counsel, Mr. Raghiv Ahsan for the respondents.

The learned Court below by the impugned order dated 11.03.2016 passed in Title Appeal No.5 of 2012 rejected the application under Order 41 Rule 27 of the C.P.C. on the ground that the appeal is to be decided expeditiously as directed by the High Court in Civil Revision.

The learned counsel submitted that in a criminal proceeding, the vendor of the respondent has admitted that he had already executed an agreement to sell the property. That statement was not available during trial of the suit, therefore, the application under Order 41 Rule 27 C.P.C. was filed by the petitioner seeking permission to adduce additional evidence by proving the judgment of the criminal case but the Court below without considering the provision as contained in Order 41 Rule 27(aa) C.P.C. rejected the

application on the ground which cannot be said to be tenable ground.

On the other hand, the learned senior counsel submitted that the statement made in criminal proceeding is not admissible in the present appeal as this appeal arises out of a judgment and decree passed under the B.B.C. Act wherein the question of title is entirely a foreign question.

Admittedly, the appeal has been filed against the judgment and decree passed in eviction suit. The trial court decreed the suit recording a finding that there is relationship of landlord and tenant.

So far the judgment passed in criminal case is concerned, it is not at all admissible in the present case as it relates to the criminal proceeding wherein the respondent is not a party and, therefore, the statement made by the vendor of the respondent in a criminal case cannot be read against the respondent.

Therefore, the Court below has rightly rejected the application under Order 41 Rule 27 as the document is not at all necessary for deciding the appeal which arises out of the judgment and decree passed under the B.B.C. Act.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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