

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.341 of 2016**

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Uma Shankar Sharma @ Shankar Sharma

.... Appellant/s

Versus

Mahaveer Thakur & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anjani Kumar

For the Respondent/s : Mr.

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

ORAL ORDER

3 19-08-2016 Heard learned counsel Mr. Jitendra Kishore Verma for

the petitioner and learned counsel Mr. Suraj Narayan Yadav for

the respondents.

Perused the order dated 29.01.2016 passed by learned
Additional District Judge-IV, Samastipur in Title Appeal No.67 of
2008 whereby the learned court below has allowed the application
filed by respondent no.1 under Order 41 Rule 27 CPC only by
saying that in the interest of justice the document is required to be
marked as an exhibit. Although in the order clearly recorded that
prior to the institution of the suit itself the copy was available with
the respondent herein i.e. on 22.02.1991.

The Hon'ble Supreme Court in the case of **Union of
India Vs. Ibrahim Uddin & Anr., (2012) 8 Supreme Court
Cases 148 (SC)** has held that the proper stage for hearing of the
application under Order 41 Rule 27 CPC is at the time of hearing

of the appeal itself. At paragraph 43 the Hon'ble Supreme Court has held as follows:-

“A mere reference to the peculiar circumstances of the case, or mere statement that the evidence is necessary to pronounce judgment, or that the additional evidence is required to be admitted in the interests of justice, or that there is no reason to reject the prayer for the admission of the additional evidence, is not enough compliance with the requirement as to recording of reasons.”

In the present case, at our hand, in view of the settled propositions of law the lower appellate court has not recorded any reason as to how the document, which is sought to be adduced as an additional evidence, is necessary for pronouncing judgment satisfactorily.

In view of the above settled proposition of law this civil miscellaneous application is allowed. The impugned order is set aside and it is directed that the interlocutory application filed by respondent no.1, who is appellant in title appeal, shall be considered at the time of hearing of the title appeal itself. It is further made clear that the order passed by the trial court and the order now passed by this Court, will not prejudice any of the party at the time of hearing of the appeal on this point.

Harish/-

(Mungeshwar Sahoo, J)

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