

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12759 of 2014

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1. Niraj Kumar Agrawal Son of Sri Niwas Das Agrawal resident of Mohalla-
Mahajan Toli No II, Chauk Ara, P.O.- Ara, P.S.- Ara Town, District- Bhojpur.

.... Petitioner/s

Versus

1. Maheshwar Prasad Agrawal S/o Late Ram Gulam Lal
2. Ashok Kr . Agrwal
3. Mukesh Kr. Agrawal
4. Mahendra Pd. Agrawal All Sons of Maheshwar Prasad Agrawal All resident of
Lal Bagh Darbhanga, P.S- Sadar Darbhanga, District- Darbhanga.
5. Sobha Agrawal Wife of Late Dwarka Pd. Agrawal
6. Ranjita Agrawal D/o Late Dwarka Pd. Agrawal.
7. Samabh Agwaral S/o Late Dwarika Pd. Agrawal 5 to 7 are resident of Katri
Bazar, Dharbhanga, P.S. Sadar Darbhanga, District- Darbhanga at present residing
at 27/B Hatia Sector No. 2, Ranchi Dhurwa District- Ranchi (Jharkhand)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uday Kumar, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 06-09-2016

Heard learned counsel for the petitioner.

The legal sustainability of the impugned order by which
the appellate court below has rejected the prayer of the appellant-
petitioner for adducing additional evidence in the appeal has been
questioned in this application filed under Article 227 of the

Constitution of India.



The fact is not in dispute that the suit for partition was filed wherein the present petitioner was the defendant. The present petitioner resisted the claim of the plaintiff for partition on the ground that the suit property was a non existent property. However the suit was decree and a preliminary decree for partition was passed. It is not the case of the petitioner that the said preliminary decree was challenged. The final decree thereafter was prepared and the appeal before the learned court below has been filed against the final decree. During the pendency of the appeal the petition was filed on behalf of the appellant under Order 41 Rule 27 C.P.C seeking to produce some documents as additional evidence. The court below has rejected the said petition with a finding that the petitioner was well aware of those documents which are public documents but did not produce the same during the trial of the suits.

After considering the submissions and perusal of the impugned order, this Court finds that it is the own case of the petitioner that during the measurement of the land by the Pleader Commissioner in the final decree proceeding, the facts leading to the necessity of the document sought to be produced as additional evidence came to the knowledge of the petitioner. However, it is nowhere the case of the petitioner that he ever objected to the said



fact or filed objection before the trial court before passing of the final decree, raising his plea on the basis of these documents. The provision of Order 41 Rule 27(aa) requires due diligence to be shown by the party seeking permission to adduce additional evidence. It does not appear that the petitioner has shown or established his due diligence in not producing these documents before the passing of the final decree. The learned court below after taking into notice the provision of law as well as the facts and circumstances of the case has passed the impugned order refusing the prayer of the petitioner.

This Court does not find any illegality or material irregularity committed by the learned court below in passing the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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