

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10946 of 2015

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Md. Shahabuddin & Ors

.... Petitioner/s

Versus

Aninullah Khan & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Lal Das, Advocate.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 28-04-2016

Heard learned counsel Mr. Rajendra Lal Das for the petitioners.

It appears that eviction suit was filed by the plaintiff-respondent under the BBC Act. The suit was decreed. The defendant-petitioner filed appeal before the lower Appellate Court being Eviction Appeal No. 02 of 2010. Before the appellate Court, the plaintiff-respondent No.9 filed application under Order 41 Rule 27 seeking permission to adduce additional evidence on the ground that during the trial, Title Suit No. 306 of 1990 has not been decided. The judgment and decree was passed in the year 2014. The Court below by the impugned order has allowed that application on the ground that this judgment passed by the Court is necessary for just decision of the controversies between the parties.

The learned counsel for the petitioners submitted that

the judgment and decree passed by the Court below in Title Suit No. 306 of 1990 cannot be marked as exhibit in the present eviction appeal because it is not a final judgment. Appeal against the said judgment and decree is pending being Title Appeal No. 21 of 2014.

It is admitted fact that this Title Suit No. 306 of 1990 was decided in 2014. Appeal is pending against that but on that ground, it cannot be said that the judgment cannot be marked as exhibit. It is not the case of the petitioner that the said judgment and decree has been set aside by the appellate court. Moreover, since it is a record of the Court, which is received in evidence and according to the Court below, it is essential for just decision of the controversies between the parties and when the court below has exercised the discretionary jurisdiction under Order 41 Rule 27 C.P.C., in my opinion, this Court cannot interfere the same in exercise of another discretionary supervisory jurisdiction.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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