

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14802 of 2015

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1. Ramashankar Singh son of Shri Kishun Singh, resident of village-Ishamailpur, P.O.- Harpur, P.S.- Rajpur, District- Buxar, Pin Code No.- 802128

.... Petitioner/s

Versus

1. Sheo Murat Singh son of Late Dubai Singh
2. Mostt. Laxaminiya wife of Late Dubai Singh Both resident of village-Ishamailpur, P.O.- Harpur, P.S.- Rajpur, District- Buxar, Pin Code No. 802128

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sachchida Nand Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

3 18-01-2016 Heard learned counsel for the petitioner as well as the learned counsel for the respondents.

The petitioner has filed this writ application under Article 227 of the Constitution of India, for setting aside the order dated 18.06.2015 passed by the 7th Additional District Judge, Buxar in T.A. No. 94 of 2010 and the order dated 05.08.2015 passed in the said appeal, whereby, the court below allowed the application under Order 41 Rule 27 C.P.C. and directed for comparison of the disputed signature with admitted signature and subsequently, application for recall was rejected.

The learned counsel for the petitioner submitted that, in fact, no consent was granted by the petitioner nor their advocate



but the court below wrongly mentioned in the order sheet that both the parties agreed that the disputed signature be compared and, therefore, Rs.5000/- cost was awarded and passed the order. When subsequently, recall application was filed, again without considering the same that no consent was granted, the court below again mentioned in that with consent the order was passed. As such, said application was rejected.

Admittedly, plaintiff-respondent No. 1 filed Title Suit No. 129 of 2002. The suit was dismissed and thereafter the complainant filed Title Appeal No. 94 of 2010 before the lower appellate court. Before the lower appellate court, application was filed by the plaintiff-appellant-respondent for comparison of the thumb impression of Dubri Singh on the sale deed dated 02.02.1991 in the interest of justice. Objection was filed by the respondent-petitioner. The court below without considering the case of both the parties only mentioned that with consent of parties thumb impression may be examined and awarded Rs. 5000/- cost. It further appears that subsequently recall application was filed alleging that no consent was given but again that recall application was rejected.

In view of the above facts, without going to the merits as to whether consent was given or not, now, it can be said

that the matter is, the petitioner is always saying that no consent was granted. The question is whether, in the facts and circumstances of the case, the lower appellate court had the jurisdiction to allow the application filed by the plaintiff-appellant-respondent herein for permission to adduce evidence.

Order 41 Rule 27 provides that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. This power is subject to three clauses of the said Rule 27 i.e. (a) if the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, [(a)(a)] the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, (b) the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. This petition of Order 41 Rule 27 C.P.C. has been interpreted by the Hon'ble Supreme Court in the case of **Union of India vs. Ibrahim Uddin and another** reported in **2013 (1) PLJR 48 SC** and the Supreme Court has held that the general principle is that



the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 C.P.C. enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply when on the basis of evidence on record, the appellate court can pronounce a satisfactory judgment.

In the present case, it will not be out of place to mention here that none of the provisions as contained in Order 41 Rule 27 is applicable. Order 41 Rule 27 C.P.C. do not provide that with consent of the parties, the additional evidence can be permitted by the appellate court to adduce in the appeal by a party. From perusal of the order impugned, it appears that it is not the finding of the lower appellate court that any of the provision of Order 41 Rule 27 is applicable and that the appellate court requires the additional evidence for pronouncing judgment satisfactorily. In view of the above facts of the case, it appears that the learned court below has exercised the jurisdiction not vested in it by law. It further appears that the court below acted in the manner not permitted by law. Thus, the impugned orders are, hereby, set

aside. The matter is remanded to the court below for a fresh decision according to law after hearing the parties on the application filed by the appellant under Order 41 Rule 27 C.P.C.

Accordingly, this writ application is allowed in terms of the direction aforesaid.

(Mungeshwar Sahoo, J.)

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