

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15583 of 2015

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Binayak Singh

.... Petitioner/s

Versus

Rahman Mian & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 29-08-2016

Heard learned counsel for the petitioner and the
learned counsel for the respondent.

It appears that in admission matter notices were
issued by this court. After notice, the respondents have appeared.

Perused the impugned order dated 4.8.2015, passed
by the learned ADJ, 3rd in Title Appeal No. 49 of 2014 whereby
the learned court below rejected the application under Order 41
Rule 27 CPC and the related amendment application under Order
6 Rule 17 CPC filed by the defendant/respondent petitioner.

From perusal of the impugned order, it appears that
considering the case of the parties and the application filed by the
petitioner the court below recorded clear finding that there was
sufficient opportunity to the petitioner to file the document in the
trial which is now sought to be adduced as additional evidence.

It appears that the plaintiff-appellant respondent has



filed a suit for declaration of the sale deed in favour of the defendant/petitioner as null and void sale deed. The petitioner's defence is that after registration of the sale deed their names are mutated and they are paying rent to the State Authorities. During the trial no document regarding mutation were produced nor any statement with regard to that was made in the written statement. Before the appellate court amendment application was filed praying for amendment to the effect that now their names have been mutated and they sought permission to adduce additional evidence in view of mutation order passed by the State Authorities.

The Hon'ble Supreme Court in the case of **Union of India Vs. Ibrahim Uddin 2012 (08), Supreme Court cases 148**, 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 CPC 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, the provisions do not apply when on the basis of the evidence on record, the

appellate court can pronounce a satisfactory judgment.

It may be mentioned here that, it is not a case of the petitioner that these documents which are sought to be adduced as additional evidence are necessary for just decision of the suit and in the absence of these documents no satisfactory judgment could be passed. Therefore, when none of the provision as contained in Order 41 Rule 27 CPC is made out, there is no question of exercise of jurisdiction under Order 41 Rule 27 by the court arises.

Thus, in my opinion, the court below has rightly rejected the application filed by the petitioner and the related amendment application. In such circumstances there is no jurisdictional error, in the impugned order, as such, this writ application is dismissed.

siddharth/-

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(Mungeshwar Sahoo, J)