

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20475 of 2014

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Shiv Shankar Prasad @ Shankar Rai & Ors

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamala Kant Tiwary

For the Respondent/s : Mr. Ga4- Ashok Priyadarshi

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 25-01-2016 Heard the learned senior counsel, Dr. Uma Shanker Prasad,

for the petitioner and the learned counsel, Mr. Mani Madhukar,

A.C. to G.A.4.

The plaintiffs petitioners have filed this application under Article 227 of the Constitution of India against the order dated 08.09.2014 passed by the learned Ad hoc A.D.J. 6, Patna in Title Appeal No.61 of 1999 whereby the Court below has rejected the application under Order 41 Rule 27 CPC.

It appears that the plaintiff filed the Title Suit No.180 of 1996 / 42 of 1998 for declaration of title over the suit property against the State and State authorities. The trial Court dismissed the plaintiff's suit. Against the said trial Court Judgment and Decree, the plaintiffs have filed Title Appeal No.61 of 1999. In the said title appeal, the application under Order 41 Rule 27 was

filed by the plaintiff appellant for seeking permission to adduce additional evidence. The learned Court below rejected the said prayer after considering the case of both the parties and holding that none of the provision as contained in Order 41 Rule 27 is applicable in the present case.

The Hon'ble Supreme Court in the case of **Union of India vs. Ibrahim Uddin 2013 (1) PLJR 48 SC** considering the various decisions of the Supreme Court including AIR 1963 SC 1526 and AIR 1965 SC 1008 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 these Rule are found to exist. Thus, provision does not apply when on the basis of evidence on record, the appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the Court and it is to be used sparingly.' Now, therefore, it is discretion of the appellate Court in this present case, the lower appellate Court has exercised the discretionary jurisdiction on the basis of the record. In such

circumstances, the other discretionary jurisdiction under Article 227 cannot be exercised to set aside the discretionary order passed by the lower appellate Court. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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