

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1507 of 2016

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Ram Swarath Mahto & Anr

.... Petitioner/s

Versus

Gopal Mahto & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 06-05-2016

1. Heard the learned counsel, Mr. Yogendra Prasad Sinha
for the petitioner.

2. By the impugned order dated 12.02.2015, the learned
Addl. District Judge, East Champaran at Motihari has rejected the
application under Order 41 Rule 27 CPC filed by the plaintiff
appellant petitioner in Title Appeal No.100 of 2003 / 8 of 2014.

3. It appears that the plaintiff petitioner filed Title Suit
No.166 of 2002 for declaration that the sale deed alleged to have
been executed by the plaintiff in favour of his daughter and son-in-
law who are defendants as void and not executed by the plaintiff.
After trial, the learned Court below dismissed the plaintiff's suit.
Appeal has been filed by the plaintiff and in that appeal,
application under Order 41 Rule 27 has been filed praying therein
to direct the respondents to produce the sale deed both the left

thumb impression on the sale deed may be compared with the admitted left thumb impress of the plaintiff. The Court below has rejected this application.

4. It is admitted fact that no steps were taken by the plaintiff in course of trial. If the plaintiff alleged that the sale deed of the year 1990 is not executed by him, the plaintiff could have very well call for the register from the Registry office and could have compared the admitted left thumb impression with the left thumb impression occurring on the Registry but no such steps were taken.

5. The Hon'ble Supreme Court in the case of *Union of India vs. Ibrahim Uddin 2013 (1) PLJR 48 SC* 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 in place 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 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.'

6. In view of the above settled proposition of law laid down by the Hon'ble Supreme Court, it is the discretionary jurisdiction of the Court exercising jurisdiction under Order 41 Rule 27 in the facts and circumstances of a particular case. There is no straight jacket formula for either reject of the application for admission of the application. Therefore, the Court below has exercised a discretionary jurisdiction. The question is whether in exercise of supervisory jurisdiction, this Court can take another view, if it is possible.

7. The Hon'ble Supreme Court in the case of *Jai Singh and others vs. Municipal Corporation of Delhi and another* 2010 (9) SCC 385 has held that **'the High Court cannot lightly or liberally act as an appellate Court and re-appreciate the evidences. Generally, it cannot substitute its own conclusion for the conclusion reached by the Courts below or the statute / quasi- judicial tribunals.'** In the present case at our hand it is admitted fact that during trial, the plaintiff did not take any step for comparison and for the first time before the appellate Court, the prayer is made for a direction to the respondent to produce the

original sale deed. I, therefore, find that in supervisory jurisdiction, the order passed by the Court below which is sound and reasoned order cannot be interfered with.

8. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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