

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15583 of 2011

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1. Parman Mahto S/O Late Judai Mahto Resident Of Babhna, P.S. And District-Jehanabad.

.... Petitioner/s

Versus

1. Ramashish Mahto S/O Late Bachoo Mahto Residents Of Babhna, P.S. And District-Jehanabad.
2. Anjani Mahto S/O Late Bachoo Mahto Residents Of Babhna, P.S. And District-Jehanabad.
3. Deo Narayan Mahto S/O Late Bachoo Mahto Residents Of Babhna, P.S. And District-Jehanabad.
4. Kamesh Singh S/O Jadubir Singh Residents Of Babhna, P.S. And District-Jehanabad.
5. Daya Singh S/O Jadubir Singh Residents Of Babhna, P.S. And District-Jehanabad.
6. Nawal Singh S/O Jadubir Singh Residents Of Babhna, P.S. And District-Jehanabad.
7. Bimal Singh S/O Jadubir Singh Residents Of Babhna, P.S. And District-Jehanabad.
8. Sudesar Bind S/O Late Gobardhan Bind Residents Of Babhna, P.S. And District-Jehanabad.
9. Jitan Bind S/O Late Gobardhan Bind Residents Of Babhna, P.S. And District-Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Alok, Adv.

For the Respondent/s : Mr. Vijay Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5. 24-02-2016 Heard learned counsel for the petitioner as well as learned counsel for the respondents.

Because of the fact that the order-sheet of land acquisition case no. 10/ 1958-1959 though having reference in para 2 of the plaint of title suit no. 48/1976, could not be filed before the learned lower Court, and further, after having the same obtained in the year 1987 could not be filed at an earlier time



during pendency of Appeal, lastly on 20.04.2011 filed along with a prayer that same be allowed to be admitted in terms of Order 41 Rule 27 of the Civil Procedure Code before the learned Appellate Court in connection with T.A. No. 112/80/07/11, pending before Additional District Judge, F.T.C. IV, Jehanabad, been refused by the Appellate Court vide order Dated 25.04.2011, the subject matter of challenge under present petition.

Heard learned counsel for the petitioner as well as learned counsel for the respondent.

Section 107 read with Order 41 Rule 27 of the Civil Procedure Code gives an additional power to the Appellate Court to entertain an additional evidence on two counts. The first one in case so prayed on behalf of either of the party, it should be properly placed that the document having on the record been refused by the learned lower Court to be admitted as an evidence and the another due diligence even after failed to procure the same. The second one happens to be vested with the Court, whereunder the document could be entertained for the just decision of the case.

As petitioner failed to satisfy the requirements, neither the document was placed before the Court, nor stated that even after due diligently failed to procure the same, hence the privilege of OXLI R&7(1)(a)(aa) is not found available to him.

Even then the Court should have analysed with regard to relevancy of the document as well as its requirement, for just decision of the case.

There happens to be disclosure in the plaint as well as it happens to be within the knowledge of the defendant/respondent regarding presence of the document which has not bearing out finality of lis as well as conclusiveness. Furthermore, the document in question appears to be relevant to decide the real issue in the controversy, and further its presence is found in the interest of justice to facilitate just decision.

That being so, the order impugned passed by learned lower Court is set aside. Petition is allowed, subject to cost of Rs. 15,000/- which should be deposited within four weeks from the date of presentation of the receipt of the order. In case, having failure on the part of the petitioner to deposit the amount within the aforesaid stipulated period, then the privilege granted in favour of the petitioner shall be seized, having opportunity to Respondent to rebuttal.

(Aditya Kumar Trivedi, J.)

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