

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10265 of 2014

=====

Yogendra Singh

.... Petitioner/s

Versus

Sigasan Gond

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Uday Kumar

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

7 22-08-2016

Heard the learned counsel, Mr. Dharmendra Kumar

Sinha for the petitioner and the learned counsel, Mr. Suryabansh Rai for the respondent.

Perused the order dated 11.04.2014 passed by Additional District Judge I, Ara in Title Appeal No.44 of 2010 whereby the learned Court below has allowed the application filed by the appellant of title appeal for appointment of Pleader Commissioner for measurement of the suit property.

The learned counsel for the petitioner submitted that title eviction suit was filed by the plaintiff-petitioner against the defendant for eviction of the respondent herein from the suit property measuring 21 decimals which is described in Schedule of the plaint with definite boundary. The suit was decreed. Against the said decree, the defendant has filed Title Appeal No.44 of 2010. The petitioner had filed Execution Case No.10 of 2010 wherein delivery of possession of the suit property has already

been effected but the lower appellate court at the instance of the defendant has appointed Pleader Commissioner for measurement of the suit property without considering the provision as contained under Order 41 Rule 27 of the C.P.C.

The learned counsel for the respondent submitted that in fact, the respondent has prescribed his title by adverse possession over 4 decimals of land which contains house wherein the respondent is residing. The petitioner herein is trying to dispossess the respondent from the suit house, therefore, it was necessary for appointment of Pleader Commissioner, as such, application was filed and the Court below considering the necessity has directed that the Pleader Commissioner be appointed and measurement be made.

From perusal of the impugned order, it appears that the lower appellate court has not at all considered the provision as contained under Order 41 Rule 27 C.P.C. Merely an application for appointment of Pleader Commissioner was filed by the respondent. Admittedly, the delivery of possession of the suit property has already been effected and the plaintiff-petitioner has been coming in possession of the property.

So far the claim of the respondent that he has got house in remaining 4 decimals of land of the plot is concerned, it may be mentioned here that in view of the submissions of the learned

counsel for the parties, the said property is not the suit property if at all there is any other land because after delivery of possession, the plaintiff never claimed any other property.

The Hon'ble Supreme Court in the case of **Union of India v. Ibrahim Uddin, (2012) 8 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 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. In the present case at our hand, the lower court has not at all considered the provision. Unless the conditions prescribed under Order 41 Rule 27 C.P.C. are fulfilled, the appellate court has no jurisdiction at all to collect evidence at the appellate stage.

In my opinion, therefore, the order passed by the Court below is without jurisdiction and, therefore, this writ application is allowed. The impugned order is set aside. The appellate court is directed to hear the appeal on merit.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--