

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.963 of 2016**

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Shiv Shankar Prasad & Anr

.... Appellant/s

Versus

Raj Kishore Choudhary & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abinash Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 22-09-2016 **1.** Heard the learned counsel, Mr. Avinash Kumar, for the
petitioner.

2. Perused the impugned order dated 10.08.2016 passed by
6th Addl. District Judge, Patna city in Title Appeal No.189 of 2007
whereby the lower appellate Court has rejected the application
filed by the petitioner under Order 41 Rule 27 of the Code of Civil
Procedure recording clear finding that the documents of criminal
cases are irrelevant for deciding the real questions in controversy
between the parties.

3. It appears that the plaintiff respondent filed the suit for
declaration of title and recover of possession. The said suit was
decreed. The defendant filed Title Appeal No.189 of 2007 before
the lower appellate Court. Before the lower appellate Court, an
application under Order 41 Rule 27 CPC was filed praying for

marking the certified copies of the documents relating to criminal cases, i.e., Malsalami P.S. Case No.70 of 1991 as exhibit in the case. The trial Court found that these are documents relating to the criminal cases, therefore, no purpose will be served in marking the document.

4. At the time of hearing of this Civil Misc. application, the learned counsel for the petitioner submitted that in the said criminal case between the parties relating to the suit property, report was called for from Circle Officer and the report was submitted by the Circle Officer. Therefore, those documents, i.e., order whereby the report was called for and the report submitted by the Circle Officer are necessary documents.

5. Admittedly, the suit have been filed for declaration of title and recovery pf possession. The report submitted by the Circle Officer is in a criminal case. In view of Section 43 of the Indian Evidence Act, the documents other than mentioned in Section 40, 41, 42 of the Evidence Act are irrelevant in civil matters. Now, therefore, when the Judgment and Decree has been passed on the basis of the evidences available on record, in my opinion, the report of the Circle Officer cannot be the evidence on which it can be said that the document is required for satisfactory

pronouncement of the Judgment.

6. In the case of *Union of India Vs. Ibrahimuddin (2012)8 SCC 148*, the Hon'ble Supreme Court has held that **'the general principal is that the appellate Court should not travel outside the record of the lower Court and cannot take any evidence in appeal. However, as 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 provision does not apply, when on the basis of the evidence on record, the appellate Court can pronounce a satisfactory Judgment.'**

It is not the case of the petitioner that on the basis of the evidence available on record, no satisfactory Judgment can be pronounced. As stated above, the document sought to be accepted relates to the criminal cases and, therefore, it is irrelevant. Further the exercise of jurisdiction under Order 41 Rule 27 is purely discretionary and the Court has to exercise this discretion judiciously.

7. Considering the facts and circumstances as submitted by the petitioner, the lower appellate Court has found that the

documents are irrelevant and, therefore, for the purpose of supervising the order, this Court cannot interfere with the impugned order under Article 227 of the Constitution of India.

8. Thus, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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