

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.474 of 2016



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Jai Narayan Jha		 Appellant/s
	Versus	
Jai Kant Dubey		 Respondent/s

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Appearance :
For the Appellant/s : Mr. Amaresh Kumar Sinha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

3 05-09-2016 Heard the learned counsel for the petitioner.

Perused the impugned order dated 09.03.2016 passed by District Judge, Banka in Title Appeal No.8 of 2015 whereby the learned lower appellate court has rejected the application filed by the petitioner under Order 41 Rule 27 C.P.C. recording a finding that none of the clause as provided under Order 41 Rule 27 is applicable in the present case.

The learned counsel for the petitioner submitted that the documents produced by the plaintiff-petitioner are not related to the suit property. The documents have been filed only to furnish the signature of the executant so that the forgery committed by the defendant may be compared with the signature occurring in these documents which are sought to be adduced as additional evidence.



The learned counsel further submitted that in view of the decision of the Supreme Court, (2012) 8 Supreme Court Cases 148, the application should have been heard at the time of final hearing of the appeal and at that time the Court could have been in a better position to understand as to whether the documents are relevant or not.

From perusal of the impugned order, it appears that the plaintiff-petitioner has filed the suit for declaration of title and confirmation of possession and in the alternative, for recovery of possession. The suit has been dismissed. According to the finding of the trial court, none of the clause as contained in Order 41 Rule 27 is applicable. According to the learned counsel for the petitioner himself, these documents which are sought to be adduced as additional evidence do not relate to the suit property. Now, therefore, the purpose for which the documents are sought to be adduced as evidence in the suit is naturally different than the necessity required under the provision under Order 41 Rule 27 C.P.C. There is no absolute rule that in all cases whenever application is filed, it shall be decided only at the time of hearing of the suit. In the present case, as stated above, admittedly, the purpose for which the documents are filed are not at all envisaged in the provision under Order 41 Rule 27 C.P.C.

In view of the above facts and circumstances of the case,

I find no reason to interfere with the impugned order.

Thus, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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