

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16209 of 2015

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Monghyr Chakshudan Yajna Samiti Eye Hospital & Anr

.... Petitioner/s

Versus

Shri Narayan Singh

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 18-07-2016

Heard the learned counsel, Mr. Vijay Kumar Mukul for the petitioners and the learned counsel, Mr. Kumar Uday Singh for the respondent.

Perused the order dated 04.08.2015 passed by Additional District Judge II, Munger in S.T.A. No.23 of 2006 whereby the Court below allowed the application filed by the plaintiff-appellant-respondent under Order 41 Rule 27 C.P.C.

From perusal of the impugned order, it appears that the Court below only held that “the document is registered sale deed of the year 1939, obviously it is old one and it is more than 30 years old. I also find that it seems genuine in garb of interest of justice and to get ends of justice, this document should be exhibited.”

The Hon’ble Supreme Court in the case of **Union of India v. Ibrahim Uddin & Anr., 2013(1) PLJR 48(SC)=(2012)**

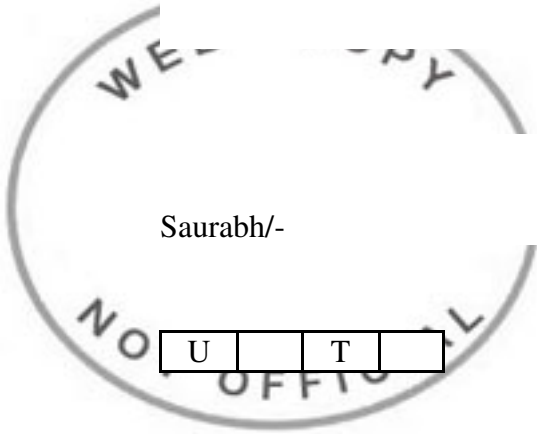


8 Supreme Court Cases 148 has held that “Order 41 Rule 27 C.P.C. enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does apply when on the basis of evidence on record, the appellate court can pronounce the satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly.”

In the present case, as stated above, the Court below has not considered the principles of law as well as the facts of the case and also not stated about how the document is required for satisfactory pronouncement of judgment. The Court below has also not recorded any finding as to whether the Court requires the document for the ends of justice or not. The Court below has passed the order only on the ground that it is of the year 1939 and appears to be genuine document.

In view of the above factual position and in view of the law laid down by the Supreme Court, the impugned order is liable to be set aside and accordingly, this writ application is allowed. The impugned order is set aside and the matter is remanded back to the lower appellate court for passing a fresh order according to

law laid down by the Supreme Court, referred to above, after
hearing both the parties.



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(Mungeshwar Sahoo, J)