

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6616 of 2014

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Kameshwar Paswan & Ors

.... Petitioner/s

Versus

Tej Narayan Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 2 11-02-2016 1. Heard the learned counsel, Mr. Arun Kumar Singh, for the petitioner and the learned counsel, Mr. Uma Shanker Singh, for the respondent.
2. By the impugned order, the lower appellate Court has rejected the application filed by the appellant petitioner under Order 41 Rule 27 CPC seeking to adduce additional evidence.
3. It appears that the plaintiff respondent filed title suit for declaration of title and recovery of possession. The defendant filed written statement contesting the case of the plaintiff and claim title on himself. The trial Court decreed the plaintiff's suit. Thereafter, the defendant petitioner filed Title Appeal No.17 of 2005 before the lower appellate Court. Before the lower appellate Court, the ordersheet of the settlement case being Case No.2004 of 1976-77 was sought to be adduced as additional evidence. The petitioner also prayed for permission to adduce additional evidence by producing the Basgit parcha. The Court below has rejected this application by the impugned

order.

4. The Hon'ble Supreme Court in the case of *Union of India vs. Ibrahim Uddin and another* 2013 (1) PLJR 48 (SC), has held that 'the appellate Court should not travel outside the record of the lower Court and cannot take any additional evidence in appeal. However, as an exception Order 41 Rule 27 CPC enables appellate Court to take additional evidence in exceptional circumstances. 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 evidences on record, the appellate Court can pronounce a satisfactory Judgment. It may be mentioned here that this decision has again been reiterated by the Hon'ble Supreme Court recently in 2015 (4) BBCJ 464 SC Andisamy Chettiar Vs. Subburaj Chettiar.

5. In the present case, admittedly the document which is sought to be adduced as additional evidence is of the year 1976 and that too relates to the proceeding before the revenue authorities which is not at all relevant in decision in the present case. Therefore, the Court below has rightly rejected the said application. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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