

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4890 of 2015

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Bishundeo Sharma & Anr

.... Petitioner/s

Versus

Chandrama Singh

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamala Kant Tiwary

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 12-05-2016

Heard learned Senior Counsel Mr. (Dr.) Uma Shankar

Prasad for the petitioners.

By the impugned order dated 06.02.2015 the learned Ad-hoc A.D.J. III, Siwan in Title Appeal No.98 of 2006 rejected the application under Order 41 Rule 27 of the Code of Civil Procedure on the ground that unless the Will is probated it is not necessary for calling it as an additional evidence in the title appeal nor can it be read in evidence.

Admittedly the probate case with respect to the Will is still pending and this was the defence of the petitioner also in the title suit giving rise to the present title appeal. It is also admitted fact that the Will is of the year 2001 whereas title suit was filed in the year 2003.

The Hon'ble Supreme Court in the case of **Union of India Vs. Ibrahim Uddin & Anr., 2013 (1) P.L.J.R. 48 SC** 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 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 provision does not apply when on the basis of evidence on record the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the Court.

As stated above admittedly the question of title is not dependent on execution of Will particularly when the probate case is still pending and in view of Section 213 of the Indian Succession Act the parties cannot claim title on the basis of unprobated Will. In my opinion, therefore, the court below has rightly held that unprobated Will cannot be read in evidence.

Thus, I do not find any reason to interfere with the impugned order and accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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