

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19409 of 2014

=====

Dineshwar Prasad Singh & Anr

.... Petitioner/s

Versus

Sheo Kumar Singh @ Dudhnath Singh & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Nitesh Kumar

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 11-01-2016

Heard the learned senior counsel, Mr. A.B.Ojha for the petitioners.

By the impugned order dated 10.09.2014, learned lower appellate Court i.e. Additional District Judge I, Ara in Title Appeal No.33 of 2013 rejected the application filed by the petitioners under Order 41 Rule 27 C.P.C.

It appears that the plaintiffs-appellants who are respondents herein filed Title Suit No.39 of 2002 in the trial Court for declaration of title and consequential relief. The present petitioner appeared and filed contesting written statement. Subsequently, however, he did not contest the suit. The learned trial Court dismissed the plaintiff's suit and thereafter the plaintiff filed Title Appeal No.33 of 2013. In this title appeal, the defendant-respondent filed application under Order 41 Rule 27 for additional evidence on the ground that they entrusted their counsel

to produce evidence but because of failure of the counsel, no evidence could be produced. The Court below by the impugned order has rejected the said application.

The Hon'ble Supreme Court in the case of **Union of India v. Ibrahim Uddin & Anr., 2013(1) PLJR 48 Supreme Court** considering all the previous judgments right from the Privy Council of the year 1917 held that "the general rule 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 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. Parties are not entitled as of right, to the admission of such evidences. 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 and it is to be used sparingly."

From perusal of the impugned order, it appears that the Court below considered all the grounds raised by the learned senior counsel for the petitioners herein and also considered the provision as contained in Order 41 Rule 27 C.P.C. and thereafter

reasoned order has been passed rejecting the application on the ground that to fill up the lacuna Order 41 Rule 27 C.P.C. cannot be applied. Since the discretionary jurisdiction exercised by the Court below appears to be sound, the same cannot be interfered with in supervisory jurisdiction.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--