

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6993 of 2016

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Baidya Nath Prasad

.... Petitioner/s

Versus

Dinesh Kumar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sarbottam Kumar Sarkar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 28-07-2016 Heard the learned senior counsel, Mr. Keshav Srivastava,
for the petitioner.

Perused the order dated 31.7.2015 passed by learned Second Addl. District Judge, Bagha, West Champaran in Title Appeal No.7 of 2009 whereby the learned lower appellate Court has rejected the application filed by the plaintiff petitioner under Order 41 Rule 27 CPC.

It appears that the plaintiff petitioner filed suit for declaration of title and for declaration that the sale deeds ext. 'A' is not binding on the plaintiff. The suit was dismissed. Title Appeal has been filed by the plaintiff. Before the appellate Court application under Order 41 Rule 27 CPC was filed praying therein for permission to adduce additional evidence to bring the sale deed dated 5.4.1995 on the ground that this sale deed said to have been executed by one of the brother of the plaintiff is in fact forged sale

deed and it was never executed by the brother of the plaintiff. The lower appellate Court by the impugned order has rejected this application recording a finding that even if comparison is made that will not decide the controversies between the parties in the suit.

Admittedly, this sale deed which is sought to be adduced as additional evidence is not under challenge before the trial Court. There is no pleading regarding this sale deed. It is sought to be adduced as additional evidence claiming that this sale deed is forged sale deed and it was never executed by one of the brother of the plaintiff. If this prayer is allowed at this stage then there will be de novo trial because there will be a fresh pleading regarding the present sale deed sought to be adduced as additional evidence. The respondent has to be given an opportunity to file written statement and then both parties will lead evidence with respect to this sale deed which is not at all the subject matter of the suit.

The Hon'ble Supreme Court in the case **Union of India vs. Ibrahim Uddin and another 2013 (1) PLJR 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 an evidence.'

In view of the above settled proposition of law and in view of the fact that the lower Court recorded clear finding that the petitioners had the knowledge about the existence of this sale deed during the trial, in my opinion, the Court below has rightly rejected the application under Order 41 Rule 27 CPC. Therefore, it cannot be said that the order passed by the Court below is irrational or the order is passed in the manner not permitted by law. Thus, no case for interference in exercise of supervisory jurisdiction is made out.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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