

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1044 of 2016**

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Tushiya Devi

.... Appellant/s

Versus

Songendra Mandal & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar Sinha

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 08-11-2016

Heard learned counsel for the petitioner.

2. Perused the impugned order dated 18.06.2016 passed by Munsif-II, Darbhanga in Title Suit No.17 of 2008 whereby the learned court below has allowed the application filed by the defendant-respondent for permission to receive in evidence the exchange deed and the registered sale deed and marked the documents as Ext.H and Ext.I.

3. Learned counsel relying on the decision of the Supreme Court, **A.I.R. 2013 Supreme Court 1849 (M/S Bagai Construction Tr. Prop Vs. M/S Gupta Building Material Store)** submitted that at the belated stage i.e. after closure of evidence of the parties and at the time of hearing arguments of the case, the court could not have allowed the application filed by the defendant and could not have marked the two documents as Ext.H and Ext.I. According to the learned counsel, both the parties have



already adduced their evidences and argument is going on and at this stage the defendants-respondents filed application seeking permission to file the documents, which was allowed and the court below has marked the two documents as exhibit. The learned counsel submitted that after deletion of the provision under Order 18 Rule 17A C.P.C., the court had no jurisdiction except Section 151 C.P.C. to permit the parties to adduce evidence after closure of the evidence of both the parties and at the time of hearing of the suit.

4. Perused the decision relied upon by the learned counsel for the petitioner. It may be mentioned here that in the case before the Supreme Court the trial court rejected the application on the ground that arguments have been concluded and the judgment has been reserved for pronouncement but the High Court set aside the order passed by the trial court. In such circumstances considering Order 18 Rule 17 C.P.C. the Hon'ble Supreme Court held that there is no acceptable reason or cause which has been shown by the plaintiff for recalling P.W.1 for further examination in the suit and no reason has been assigned as to why the documents were not produced earlier. However, the Supreme Court has held that power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of

process of the court and the court can exercise its discretion to permit reopening of the evidence or recalling of witness for further examination, cross-examination after evidence led by the parties. Therefore, in the facts and circumstances of that case the Hon'ble Supreme Court held that the plaintiffs were not entitled to produce evidence by examining witnesses at the stage when the case has been reserved for pronouncing the judgment.

5. From perusal of the judgment of the Supreme Court relied upon by the learned counsel for the petitioner, it appears that the Supreme Court relied upon earlier decision in the case of **K.K. Velusamy Vs. N.Palanisamy (2011) 11 Supreme Court Cases 275** and also the decision of the Supreme Court in the case of **(Vadiraj Naggappa Vernekar Vs. Sharadchandra Prabhakar Gogate), (2009) 4 Supreme Court Cases 410=A.I.R.2009 Supreme Court 1604**. In all these cases it has been held that in appropriate cases the court has the jurisdiction under Section 151 C.P.C. to permit the reopening of evidence and/order recalling of witnesses for further examination/cross-examination after evidence led by the parties is concluded and arguments have commenced or even when arguments have concluded and case has been reserved for judgment. Therefore, in view of these decisions now it becomes clear that in appropriate

cases the court can exercise inherent jurisdiction under Section 151 C.P.C. From perusal of the impugned order it appears that the court below recorded clear finding that the documents are more than 30 years old documents and those documents are necessary for determination of real controversies between the parties.

6. In similarly situated case the Hon'ble Supreme Court in **(2014) 16 Supreme Court Cases 422** had allowed the application filed by the appellant before the Supreme Court seeking permission to adduce evidence at the stage of argument. In that case the trial court as well as the High Court rejected the application. The Supreme Court set aside the order passed by both the courts below and allowed the application of the plaintiff to file documents at the stage of hearing arguments of the case. Therefore, there is no straight-jacket formula for exercising the jurisdiction under Section 151 C.P.C. Further when the court below has exercised the jurisdiction vested in it by law under Section 151 C.P.C., in exercise of similar jurisdiction under Article 227 of the Constitution of India for the purpose of supervising the order passed by the court below, the High Court cannot take another view. Reference may be made to the decision of the Supreme Court **(2010) 9 Supreme Court Cases 385** wherein the Supreme Court has held that the High Court cannot

lightly or liberally act as an appellate court. Generally it cannot substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi tribunals. The Supreme Court said that the High Court is expected to exercise the supervisory jurisdiction with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a “ bull in china shop” to correct all errors of judgment of a court. In the present case since only the documents have been admitted in evidence on the ground that the documents are necessary for decision of the controversies between the parties, this court cannot take another view on the basis of the same set of fact saying that the documents are not necessary, therefore, this should not be marked as exhibit.

7. Thus, I find no reason to interfere with the impugned order and accordingly, this civil miscellaneous application is dismissed.

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(Mungeshwar Sahoo, J)