

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.353 of 2016**

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Brahmdeo Das

.... Appellant/s

Versus

Sri Parmanand Singh & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjeet Tiwary

For the Respondent/s : Mr.

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

2 19-08-2016 Heard learned counsel Mr. Ranjeet Tiwary for the

petitioner.

Perused the impugned order dated 01.02.2016 passed by

Additional District Judge-II, Jehanabad in Title Appeal No.10 of

2013 whereby the learned lower appellate court has rejected the

application filed by the petitioner under Order 41 Rule 27 CPC.

From perusal of the impugned order, it appears that the

learned court below has categorically held as follows:-

“Hence at this stage I come to the conclusion that the appellant has neither filed the said document in the court below nor the same was refused by the court of Sub-Judge nor the appellant has shown any reason why he has not filed the said documents in the court below nor this appellate court requires these documents to be produced by the appellant to enable this court to pronounce the judgment or have any substantial cause. Hence in this case I found that the order 41 Rule 27 of C.P.C. is not applicable in this case for these documents at all hence the petition filed by the appellant which are being filed by the appellant whenever this case is being taken for argument is hereby rejected and the

case is being fixed for argument on 03-02-2016 for argument.”

Learned counsel for the petitioner relied upon a decision of the Supreme Court, **A.I.R. 2016 Supreme Court 3139 (Union of India Vs. K.V. Lakshman and others)** and submitted that the documents which are public documents are to be accepted as additional evidence by the appellate court under Order 41 Rule 27 CPC.

From perusal of the said judgment, it appears that earlier judgment of the supreme court in the case of **Union of India Vs. Ibrahim Uddin, 2013 (1) PLJR 48 (SC)** has not been noticed at all. The fact of this decision relied upon by the learned counsel for the petitioner is entirely different than the fact of the present case. The Supreme Court in the case of **Union of India Vs. Ibrahim Uddin** has clearly 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 XLI 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 and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself.

As quoted above the trial court has categorically held that none of the provision as contained in Order 41 Rule 27 CPC is applicable nor the Court requires these documents to be produced by the appellant to enable the court to pronounce the judgment nor the appellant has any substantial cause as such Order 41 Rule 27 CPC is not applicable.

So far the submission of the learned counsel for the petitioner that the finding of the court below is error of record, in fact the application was filed before the trial court but it was neither refused nor it was accepted and in fact the document was seized by the court saying that it is forged document is concerned, it may be mentioned here that if it is error of record also then this Court cannot interfere with the finding of fact considering this factual aspect as the Hon'ble Supreme Court in the case of **Jai Singh and others Vs. Municipal Corporation of Delhi and another, (2010) 9 Supreme Court Cases 385** has held that the High Court cannot lightly or liberally act as an appellate court and

re-appreciate the evidence. Generally it cannot substitute its own conclusion for the conclusions reached by the courts below or the statutory quasi judicial tribunals. Now, therefore, the point raised by the appellant are all questions of fact which have been considered by the court below and categorical finding has been recorded that in the trial court the document was never produced nor any explanation has been given as to why it was never produced. If at all this is error of record then also the same cannot be interfered with in exercise of supervisory jurisdiction.

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

(Mungeshwar Sahoo, J)

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