

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.880 of 2016**

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Gaurishankar Choudhary

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Karuna Kant Jha

For the Respondent/s : Mr. Subhash Chandra Yadav-Gp15

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

2 24-10-2016

Heard the learned counsel for the petitioner and the
learned counsel for the State.

Perused the impugned order dated 06.06.2012 passed
by Adhoc A.D.J., F.T.C. I, Supaul in Title Appeal No.29 of 2008
and order dated 02.06.2016 passed by District Judge, Supaul in the
same title appeal whereby the application filed by the petitioner
before the lower appellate court under Order 41 Rule 27 C.P.C.
has been rejected.

So far order dated 06.06.2012 is concerned, this civil
miscellaneous application has been filed on 26.08.2016 i.e. about
after four years. Further, it may be mentioned here that
subsequently another application under Order 41 Rule 27 C.P.C.
was filed before the appellate court which has been rejected by the
order dated 02.06.2016. It appears that subsequent order has been
passed on the ground that earlier order has been passed rejecting

the same prayer, therefore, it will operate as resjudicata.

The Hon'ble Supreme Court in the case of **U.P. State Road Transport Corporation v. State of U.P. and another, AIR 2005 Supreme Court 446** has held that "res judicata applies also as between two stages in the same litigation to this extent that a Court, whether the trial Court or a higher Court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings."

In the present case at our hand, the same matter has already been decided by the lower appellate court on 06.06.2012. Therefore, so far resjudicata is concerned, the Court below has rightly applied the principle of resjudicata.

So far seeking permission to adduce additional evidence is concerned, the Hon'ble Supreme Court in the case of **Union of India v. Ibrahim Uddin & Anr, 2013(1) PLJR 48 Supreme Court** 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 under 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. Thus, provision does not apply when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the jurisdiction of the court and is to be used sparingly.

In the present case, from the facts, it appears that the certified copy of the registered sale deed had already been produced before the trial court. After hearing the parties, the trial court in the judgment did not rely the said document. Before the appellate court, a fresh certified copy is sought to be adduced as additional evidence. In my opinion, in view of this fact, none of the clauses under Order 41 Rule 27 C.P.C. is applicable.

In the result, I find no reason to interfere with the impugned order. Accordingly, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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