

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18401 of 2015

=====

Arun Kumar Yadav & Ors

.... Petitioner/s

Versus

Sri Chandeshwari Prasad Yadav & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Praveen Kumar Agrawal

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 24-06-2016 Heard learned counsel, Mr. Radhey Shyam,

appearing for the petitioners.

2. It appears that the plaintiffs-respondents filed suit of specific performance of contract. The written statement was filed. The trial court, after hearing both the parties on the basis of the materials available on record, decreed the plaintiffs-respondents' suit. The defendants thereafter filed title appeal before the lower appellate court. Before the lower appellate court, at the time of hearing of the title appeal, an application under Order 41 Rule 25 C.P.C. was filed praying for framing an additional issue and it was brought that after framing the issue, the same may be referred to the trial court for recording the finding on that issue. By the impugned order, the court below has rejected this application.

3. Order 41 Rule 25 reads as follows;

“Where the court from whose decree the appeal is preferred has omitted to frame or try any issue, or

to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the court from whose decree the appeal is preferred and in such case shall direct such court to take the additional evidence required.”

Therefore, this is the power of the court to remand the matter on being satisfied that it is necessary to frame an issue. This finding can only be recorded by the Court after hearing all the parties and not prior to hearing of the appeal at the instance of the appellant. If, in fact, there are evidences as have been submitted by the learned counsel for the petitioners herein, then in my opinion, settled principle of law is that if the parties knowing the case of both the parties have entered into trial and have adduced evidences, merely because an issue has not been framed, the judgment will not be vitiated on that ground. Reference may be made to the decision of the High Court reported in ***AIR 1983 SCC Page 884, 2013 (1) PLJR 48 SC Paragraph 69 Clause 7.***

I therefore, find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

brajesh/-

U			
---	--	--	--