

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7724 of 2015

=====

Sk. Bakrid & Ors

.... Petitioner/s

Versus

Mohammad Mansoor & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Das No.- 2

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

2

07-04-2016

Heard learned counsel, Mr. Rakesh Kumar Singh,

appearing for the petitioner.

2. The plaintiff filed title suit for declaration of title and correction of the entry in the record of right. The suit was dismissed. The petitioner filed T.A. No. 10 of 2012. In this title appeal, application was filed by the plaintiff under Order 41 Rule 27 of the C.P.C. seeking permission to adduce the additional evidence to contradict the case of the defendant and/or to prove that the certified copies of the sale deeds filed by the defendants in the suit, which have been marked as Exhibit-A and A/1 are manipulated documents. The Additional District Judge, IV, Bettiah by order dated 10.02.2015 rejected the application under Order 41 Rule 27 of the C.P.C. on the ground that when the documents were available in the trial court itself, the plaintiff should have cross-examined the witnesses in support of his claim that the documents are manipulated documents.

3. The learned counsel for the petitioner submitted that

in fact, the certified copy of sale deed was produced in the trial court but the trial court also rejected the said prayer and, therefore, it was necessary for the plaintiff to file application under Order 21 Rule 27 C.P.C.

3. It is admitted fact that the certified copies have already been produced by the defendants in the court below and the sale deeds have been marked as exhibit-A and A/1. In the judgment, the same were considered by the trial court and then decision has been arrived at. So far the submission that the certified copies of the same sale deed were produced in the court below by the plaintiff is concerned, it is admitted fact that the said documents were produced after examination of the witnesses by the defendant only to contradict the certified copies filed by the defendant. The court below observed that no cross-examination was made to the witnesses examined by the defendant regarding manipulation of the plots in the registered sale deed.

4. The Hon'ble Supreme Court in the case of ***Union Of India vs Ibrahim Uddin & Anr*** reported in ***2013 (1) PLJR 48 SC*** has held 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.

5. In the present case, since the registered sale deeds are already on record and the question raised by the petitioner is with regard to manipulation of the said registered sale deeds, which can be decided on the basis of the evidences already produced by the parties and after going through the registered sale deeds and it is not the case where in absence of the documents, which is sought be produced, the judgment cannot be pronounced satisfactorily. Thus, when the court below after considering the facts and circumstances of the case has exercised the discretion in one way or the other, this Court can not interfere with the same in exercise of supervisory jurisdiction. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

brajesh/-

U			
---	--	--	--