

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.54 of 2017

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Biphan Gareri (Bhagat)

.... Appellant/s

Versus

Suresh Ahir & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Nath Sinha

For the Respondent/s : Mr. Md. Khurshid Alam- Aag12

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 07-02-2017 Heard learned counsel for the petitioner and learned
counsel for the State.

2. Perused the impugned order dated 01.10.2016
passed by learned 6th Additional District Judge, Ara in Title
Appeal No.138 of 2013 whereby the learned lower appellate court
has rejected the application under Order 26 Rule 9 CPC praying
for appointment of Pleader Commissioner.

3. Mainly the grievance of the petitioner is that before
the trial court a private person submitted the report. The
application filed by the petitioner under Order 26 Rule 9 CPC was
not considered by the trial court and the trial court in the judgment
relied upon the report of a private person which is wrong. In such
circumstances the petitioner filed application under Order 26 Rule
9 CPC before the lower appellate court praying for appointment of
Pleader Commissioner. The learned court below without



considering this fact has rejected the application filed by the petitioner.

4. On the other hand, learned counsel for the State submitted that rightly the court below has rejected the application.

5. From perusal of the impugned order, it appears that Pleader Commissioner's report is already there which was produced before the trial court, which has been marked as Ext.A. The Hon'ble Supreme Court in the case of **Union of India Vs. Ibrahim Uddin & Anr., 2013 (1) P.L.J.R. 48 SC** has held that the general principle is that the appellate court should not travel outside the record of the lower court below and cannot take any evidence in appeal. However, as an exception, Order 41 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.

6. In the present case, as has been held by the trial court there is already a Pleader Commissioner's report produced in the trial court. Now, therefore, the appellant cannot be permitted to



adduce additional evidence by appointing Pleader Commissioner by the appellate court.

7. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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