

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.818 of 2016

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| 1. Imteyaz Ahmad, son of late Ali Imam | |
| 2. Shamshad Ahmad, son of late Ali Imam | |
| 3. Bibi Khatoon, widow of late Ali Imam, all residents of village Sariyan
Narender, P.S. Brauli, district Gopalganj | Appellants |
| Versus | |
| 1. Bibi Shah Jahan, widow of late Hadees Mian | |
| 2. Mumtaz Ahmad, son of late Ali Imam, both residents of village Sariyan
Narender, P.S. Brauli, district Gopalganj | Respondents |
- =====

Appearance :

For the Appellants : Mr. Khatim Reza, Adv.

For the Respondents : Mr. M.N. Prabat, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

4 30-11-2017 Heard both sides.

The petitioners filed this civil miscellaneous petition under Article 227 of the Constitution of India against the order, dated 26.04.2016, passed in Title Appeal No. 24 of 2013 by which the Additional District Judge, V, Gopalganj, allowed the petition filed by the petitioners-appellants under Order 41 Rule 27 of the Civil Procedure Code and ordered to mark the documents as Exhibits 'ka' and 'kha'.

The learned counsel for the petitioners-defendants submits that Order 41 Rule 27 of the Civil Procedure Code mandates that certain conditions are required to be proved before a party is allowed to adduce additional evidence at appellate stage, but, the learned Additional District Judge by a cryptic and non-speaking order allowed the petition of the appellants.

Mr. M.N. Prabat, the learned counsel for the respondents (appellants), on the other hand, submitted that the respondent-appellants filed petition for additional evidence and to allow them to mark the two registered documents which were marked as '1G' and '1H' in Title Suit no. 103 of 1994 the certified copies of which were filed in the present case, being Title Suit No. 153 of 2009. Defendant no. 1 also filed the petition to mark those two documents, but, due to inadvertence those two documents



were not marked and no order was passed on 03.07.2012 although the learned Munsif considered the two documents in his evidence. Later on both the documents were misplaced. The learned Additional District Judge, after considering the facts, stated in the petition, allowed the appeal to bring on record as additional evidence and marked those two documents as Exhibits 'ka' and 'Kha'.

Having considered the submissions and the facts and on perusal of order, impugned, I am of the opinion that the appellate Court can allow the party to adduce additional evidence provided the applicant satisfies the Court that the Court which passed the decree under appeal refused to admit evidence, which would have been admitted or the documents which were not in the knowledge of the parties seeking to produce as additional evidence and if the Court finds any documents or the witness necessary for the just decision of the case. On mere perusal of the order, dated 26.04.2016, it appears that the learned Additional District Judge did not assign any reason before allowing the appellants to produce the documents as additional and marked the same as Exhibits 'ka' and 'kha'.

Therefore, I am of the view that the learned Additional District Judge has committed jurisdiction error in passing the order, dated 26.04.2016, as the same sans reasoning.

Accordingly, the order, dated 26.04.2016 is set aside. The civil miscellaneous petition is allowed. The matter is remitted to Additional District Judge, V, Gopalganj, to hear both the sides and dispose off the petition in accordance with law.

(Prabhat Kumar Jha, J)

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