

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.127 of 2016

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Badri Sao Son of Late Prasadi Sao Resident of Mohalla - Lalbagh, P.O., P.S. and
District - Sheikhpura

.... Appellant/s

Versus

Sanjay Kumar Son of Ganga Kumar Yadav Resident of Mohalla - Inday, P.O., P.S.
and District - Sheikhpura

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Najmul Hodda, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-05-2017

Heard Mr. Hoda, learned counsel for the petitioner.

The appellant is the petitioner in this application assailing
the order passed by the appellate court below turning down the prayer
of the appellant for adducing additional evidence under Order 41 Rule
27 C.P.C.

Learned counsel for the petitioner has submitted that it
was due to lack of proper legal advice and non-awareness of the legal
consequences that those documents could not be produced during the
course of trial in the suit. It has been submitted that the learned court
below ought to have considered those aspects and ought to have
allowed the prayer because one of the three situations envisaged under
Order 41 Rule 27 C.P.C. also includes the necessity of the court for



the documents. It has been propounded that in the facts and circumstances, the appellate court below ought to have itself considered the necessity for the documents which have been sought to be adduced by way of additional evidence.

After considering the submissions and the facts and circumstances of the case, it is apparent that the suit has been filed by the plaintiff-appellant-petitioner in the year 2006 claiming his title and also assailing the transfer made in favour of the defendant. The suit remained pending for nearly 8 years and after its dismissal, the Title Appeal No. 07 of 2014 has been filed by the plaintiff-appellant. It is not the case of the on behalf of the plaintiff-appellants that they were not aware of the documents sought to be adduced by way of additional evidence and specious plea has been raised in the petition that as the appellant could not obtain certified copies of those documents, the same were not produced before the trial court. The well settled principle in law is that the provision of order 41 Rule 27 C.P.C. is not made to allow a party to fill up the lacunae at the appellate stage. Further in the case of **A. Andisamy Chettiar Vs. A. Subburaj Chettiar, 2016 (1) PLJR S.C. 394** their lordships have considered the ambit and scope of Order 41 Rule 27 and have laid down as follows:-

“12.....From the opening words of sub-rule (1)



of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate state. It is against the sprit of the Code to allow a party to adduce additional evidence without fulfillment of either of the three conditions mentioned in Rule 27.....”

Tested on the anvil of the aforesaid dictum of the Apex Court, it is admitted position that the present petitioner did not file any petition in the trial court seeking to adduce those documents in evidence. The appellate court below has also come to the finding that no due diligence for not producing those documents during the course of trial has been established on behalf of the appellant. In this backdrop, this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

