

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11912 of 2013

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Triveni Singh

.... Petitioner/s

Versus

Yogi Yadav & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 12-09-2017 Heard learned counsel Mrs. Sudha Ambastha for the petitioner and learned counsel Mr. Arvind Kumar for the respondents.

2. This application under Article 226 of the Constitution of India is treated as an application under Article 227 of the Constitution of India and is heard.

3. The plaintiff-appellant-petitioner has filed this writ application for setting aside the order dated 26.02.2013 passed by learned 3rd Additional District Judge, Begusarai in Title Appeal No.21 of 2012 whereby the learned lower appellate court has rejected the application filed by the plaintiff-petitioner under Order 41 Rule 27 of the Code of Civil Procedure.

4. From perusal of the impugned order, it appears that the court below has rejected the application on the ground that the khatian was published in the year 1901 but the plaintiff-appellant



never produced the same in the court below and no case is made out for additional evidence before the appellate court. It appears that the court below has not considered as to whether the document sought to be produced as additional evidence is necessary for just decision of the controversies between the parties or not and whether it is relevant or not and also whether on the basis of the evidences available on record the judgment can be pronounced satisfactorily and has rejected on the grounds mentioned above. The learned court below has also not considered the settled principles of law laid down by the Supreme Court in the case of **Union of India Vs. Ibrahim Uddin & Anr., 2013 (1) P.L.J.R. 48 (SC)**.

5. The Hon'ble Supreme Court in the aforesaid case has held at paragraph 38 that **an application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merit so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the**



evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. As stated above the court below has not at all considered this settled principle of law. Therefore, the impugned order is contrary to the settled principle of law and accordingly, it is liable to be set aside.

6. In the result, this writ application is allowed. The impugned order is set aside and the matter is remanded back to the court below for considering the additional evidence application under Order 41 Rule 27 of the Code of Civil Procedure at the time of final hearing of the title appeal.

(Mungeshwar Sahoo, J)

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