

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23405 of 2013

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Nand Prasad Bhagat & Ors

.... Petitioner/s

Versus

Ram Uday Bhagat & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghav Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 10-10-2017 Heard the learned counsel, Mr. Raghav Prasad, for the petitioner.

This application under Article 227 of the Constitution of India has been filed by the defendant appellant petitioner for setting aside the order dated 21.03.2013 passed by learned Ad hoc Addl. District Judge-V, Siwan in Title Appeal No.22 of 2009 whereby the learned ADJ has rejected the application filed by the defendant petitioner for seeking permission to adduce additional evidence by calling for the ordinal register from the office of sub-Registrar, Chapra.

From perusal of the impugned order, it appears that the Court below considered the case and the submission of the appellant and thereafter rejected the application recording finding that none of the clauses at provided under Order 41 Rule 27 is applicable.

The Hon'ble Supreme Court in the case *of Union of India vs. Ibrahim Uddin 2013 (1) PLJR 48 SC* at paragraph 25 has held 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 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 these 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.’

As stated above, in the present case, the lower appellate Court has thus exercised this discretionary jurisdiction. As such the order do not suffer from jurisdictional error nor the order has been passed in the manner not permitted by law. In my opinion, therefore, no case for interference in exercise of supervisory jurisdiction is made and accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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