

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.901 of 2016**

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1. Narsingh Prasad @ Narsingh Prasad Sah s/o Late Ramchalitra Prasad Sah
resident of Mohalla Saraiyaganj, P.O. and P.S. -Town Muzaaffarpur, District
Muzaaffarpur.

.... Petitioner/s

Versus

1. Shiv Shankar Prasad s/o Late Saryug Sah resident of Mohalla
Saraiyaganj, P.O. and P.S. -Town Muzaaffarpur, District Muzaaffarpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER**

5 18-12-2017 Heard both sides.

The petitioner has filed this civil miscellaneous petition
for setting aside the order dated 27.06.2016 passed in Eviction
Appeal No.3 of 2012.

The appellant filed Eviction Suit No.3 of 2006. Suit was
dismissed. The plaintiff preferred appeal against the order passed
in Eviction Suit No.3 of 2006. During the pendency of the appeal,
the plaintiff filed the petition under Order 41 Rule 27 for bringing
on record 10 documents as additional evidence and by the
impugned order except document Nos.3 and 4, the learned
Additional District Judge allowed the petition of the appellant to
bring on record other 8 documents as additional evidence.

The petitioner-respondent filed this petition assailing
the order that Order 41 Rule 27 prescribes condition for bringing



additional evidence on record. The first condition is that the documents which were to be produced as additional evidence should not have been admitted in evidence by the Court from whose decree, the appeal is preferred. Secondly, the party seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when decree appealed against was passed and the third condition is that the appellate court himself requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.

It is submitted that the case of the petitioner comes within the purview of Order 41 Rule 27 (1)(aa) and not under 1(a) and (b) of Rule 27 but the learned Additional District Judge did not give any reason about the relevancy of those documents or the fact that the appellant could not be able to bring on record those documents during the course of hearing of the suit even after exercising due diligence. The learned counsel for the petitioner placed his reliance on the judgment of Apex Court reported in 2013(1) PLJR 48(SC) and a Single Bench judgment of reported in 2016(4) PLJR 4 in which the matter was remitted to the court below to consider the facts and pass order in accordance with law.



Mr. Yogendra Sinha, learned senior counsel for the respondents contends that the learned Additional District Judge has recorded that many documents are relevant but of course did not give cogent reasons for admitting the additional evidence.

Having considered the facts and submission of both sides, I find that plaintiff filed petition with 10 documents to bring them on record as additional evidence but the plaintiff has not stated anywhere that those documents were not in their knowledge during the course of hearing the suit and even the court did not assign any reason that the appellant could not bring the document on record during the pendency of the suit even after exercise of due diligence and about relevancy of the document in hearing the suit.

Therefore, I am of the view that learned Additional District Judge has committed jurisdictional error in allowing the petition of the plaintiff to bring on record those documents as additional evidence without assigning reasons. Accordingly, the order dated 27.06.2016 is set aside with a direction to the Court to pass order afresh in accordance with law.

Accordingly, this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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