

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8461 of 2013

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Chando Singh & Ors

.... Petitioner/s

Versus

Ram Naresh Pandey & 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

3 09-08-2017

1. Heard the learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the defendant-petitioner for setting aside the order dated 22.01.2013 passed by Addl. District Judge V, Lakhisarai in M.T.A. No.44 of 2007 whereby the learned Addl. District Judge rejected the application filed by the petitioner dated 15.03.2012 praying for marking exhibit of 2 Sudhbharna document written by Kavaldhari Singh.

3. The learned counsel for the petitioner submitted that it is necessary to mark these documents as exhibit because Batwara deed had been filed by the plaintiff respondent in the trial Court showing that Kavaldhari Singh had signed Batwara deed in the year 1945 whereas in the two documents sought to be exhibited on



which Kavaldhari Singh had put his left thumb impression and, therefore, to falsify the case of plaintiff, the documents are necessary.

4. It is admitted fact as stated in this writ application that the plaintiff respondent filed the suit for declaration of title and confirmation of possession and / or in the alternative for recovery of possession. So far the Sudhbharna deed are concerned, those deeds have got no relevance according to the petitioner themselves. Those deeds are sought to be filed as additional evidence only to controvert the case of the plaintiff, i.e., when he signed in 1945 how he put his left thumb impression in the year 1962.

5. It is settled principal of law 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. Reference has been to the decision of **Union of India vs. Ibrahim Uddin 2013 (1) PLJR 48 SC.**

6. In the present case, from perusal of the impugned order, it appears that the appellate Court clearly recorded finding that no reason has been assigned as to why these documents were not produced before the trial Court. It is further clear that nowhere it is mentioned either by the appellate Court or by the petitioner that the documents are necessary for passing satisfactory judgment in the suit by the appellate Court. Now, therefore, the provisions as provided under Order 41 Rule 27 is not at all attracted here.

7. Thus, I do not find any jurisdictional error in the impugned order. The learned appellate Court has rightly rejected the application for additional evidence. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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