

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15644 of 2010

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Binda Singh S/O Late Mukhi Singh R/O Vill.- Garobigha, P.S.- Narhat, Distt.-
Nawadah

.... Petitioner/s

Versus

1. Nawal Singh @ Nageshwar Singh S/O Late Kishun Singh R/O Vill.- Garobigha, P.S.- Narhat, Distt.- Nawadah
2. Most. Sumitra Devi Widow Of Late Kishun Singh R/O Vill.- Garobigha, P.S.- Narhat, Distt.- Nawadah
3. Kari Devi W/O Anil Singh And D/O Late Kishun Singh R/O Vill.- Garobigha, P.S.- Narhat, Distt.- Nawadah, At Present R/O Vill.- Sarkanda, P.S.- Gobindpur, Distt.- Nawadah
4. Gori Devi W/O Ram Charitra Singh And D/O Late Kishun Singh R/O Vill.- Garobigha, P.S.- Narhat, Distt.- Nawadah, At Present R/O Vill.- Karki, P.S.- Ariari, Distt.- Sheikhpura
5. Savitri Devi D/O Late Mungi Singh R/O Vill.- Garobigha, P.S.- Narhat, Distt.- Nawadah
6. Shail Devi D/O Late Mungi Singh R/O Vill.- Garobigha, P.S.- Narhat, Distt.- Nawadah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh and
Mr. Hans Raj, Advocates

For Respondents No.5 & 6 : Mr. Devendra Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 16-01-2017

Heard learned counsel for the parties.

Earlier, notices were issued to the respondents, but today only counsel for respondents No. 5 and 6 has assisted the Court.

The present application has been filed against the order dated 03.12.2009 passed by the Fast Track Court-III, Nawadah in Title Appeal No.19 of 2003/ 03 of 2005, by which the petition filed by the petitioner under Order XL1 Rule 27 of the Code of Civil Procedure (hereinafter referred to as the 'Code') for producing



additional evidence, has been rejected.

Learned counsel for the petitioner submitted that he was initially a defendant in the Suit and later on, upon death of the original plaintiff, was transposed as the plaintiff, and having lost the suit he filed Title Appeal. He submitted that the document relates to the statement made by the respondent no.1, in an informatory petition, filed before the Sub-divisional Officer, Rajauli, Nawada, that there was already a partition, which was denied in the suit. It was submitted that such document is relevant for the adjudication of the matter for the reason that a person having admitted about partition earlier, in a proceeding before an authority, he may not be allowed to take the stand that there was no partition and once this fact was brought to the notice of the Court, the petition filed for producing additional evidence ought to have been allowed. He further submitted that the document, by way of additional evidence sought to be brought on the record, will materially affect and aid the disposal of the appeal, and, thus, the Court should normally allow such application, as it would be in a position to pronounce final judgment on the basis of such additional evidence.

Learned counsel appearing for respondents No. 5 and 6 submitted that the Court has rightly passed the impugned order as the requirement of Order XL1 Rule 27 (1) (aa) of the Code has not been fulfilled at all. He submitted that even if a provision of law is



available, any relief can be given in accordance with the stipulations in the law which, in the present case, has not been complied with by the petitioner. He submitted that only an application was filed for producing additional evidence, though without stating anywhere as to why such document was not produced at the original stage of trial or when the said new fact or document came into the knowledge of the petitioner and thus, without disclosing any of these requirements, the rejection of the prayer is sound in law.

Having considered the rival contentions, this Court does not find any merit in the writ application. Taking additional evidence at the appellate stage is provided under Order XL1 Rule 27 of the Code, which reads as under:-

“27. Production of additional evidence in Appellate Court-
(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-
(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
(aa) 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 the decree appealed against was passed, or
(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,
the Appellate Court may allow such evidence or document to be produced, or witness to be examined.
(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission”.



From the above, it is obvious that Order XL1 Rule 27 (1) (a) and (b) are provisions when the Court has *suo motu* power to order for production of additional evidence, but when a party seeks the same, it has to comply with the requirements of Order XL1 Rule 27 (1) (aa).

In the present case none of the requirements, which are essential, was satisfied, as nothing has been shown to the Court with regard to the same. If a right exists, as per the Statute, the requirement of the Statute is to be fulfilled before any relief can be granted. The present is a case where there is no fulfillment of any requirement and not a case where there has been substantial fulfillment of the requirement and in which case, the Court may be persuaded to take a liberal view and allow such a petition.

In view of the aforesaid, the writ application stands dismissed.

(Ahsanuddin Amanullah, J)

V.P.Sinha/-

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