

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.375 of 2016

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1. Santosh Kunwar Son of Late Surendra Kumar, resident of Village- Madarpur @
Manjarpur, P.S- Amarpur, District- Banka.

.... Petitioner

Versus

1. Baneshwar Mandal
2. Dhaneshwar Mandal Both are sons of Late Basant Mandal.
3. Raghu Mandal son of Dhaneshwar Mandal
4. Bhudeo Mandal son of Kaleshwar Mandal
5. Munna Mandal son of Bhudeo Mandal
6. Kailash Mandal Son of Bhudeo Mandal
7. Chhathu Mandal son of Late Rudo Mandal All are resident of Village-
Manjarpur, P.S.- Amarpur, District Banka.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Awadhesh Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date: 09-03-2018

Heard both sides.

The petitioner has filed this Civil Miscellaneous petition against the order dated 25.04.2016 passed in Title Appeal No.02 of 2014, by which, learned Additional District Judge-VI, Banka, rejected the petition of the petitioner filed under Order 41 Rule 27 of C.P.C.

From perusal of the order impugned, it is evident that learned Additional District Judge has taken note of the fact that the defendant filed documents along with list of documents and also filed petition to exhibit those documents but no order was passed on the petition of the defendant nor the documents filed by defendant were exhibited. The learned Additional District Judge has also taken note of



the fact that the documents are public documents but dismissed the petition of the petitioner to exhibit those documents by way of additional documents only on the ground that it was on account of laches on the part of the defendant who did not move to exhibit those documents.

I find that learned Additional District Judge, Banka by rejecting the petition has committed jurisdictional error and failed to exercise power vested by law.

Order 41 Rule 27 of C.P.C. contains three conditions for adducing additional evidence:-

- (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.**

From perusal of the aforesaid provision, it is apparent that the court is vested with the power to allow a party to adduce additional evidence during the appellate stage on fulfillment of the



aforesaid three conditions. The petitioner was the defendant and he filed all the documents and also moved petition for exhibiting those documents as exhibits but no order was passed which amounts to refusal by the Court before the delivery of judgment. The case of the petitioner comes within clause (a) of Order 41 Rule 27. Therefore, I find that the order impugned is illegal and not sustainable in the eye of law.

Accordingly, this Civil Miscellaneous petition is allowed and the order dated 25.04.2016 passed in Title Appeal No.02 of 2014 is set aside and the petition of the petitioner to exhibit those documents is allowed.

(Prabhat Kumar Jha, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.03.2018
Transmission Date	NA

