

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17672 of 2011

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1. Sanjay Kumar Arya @ Sanjay Kumar, son of Late Suresh Mandal, Resident of Village-Dhini Nauwa Lane,Ps-Nath Nagar District-Bhagalpur.
 2. Kishore Kumar Arya, son of Late Suresh Mandal, Resident of Village- Dhini Nauwa Lane,Ps-Nath Nagar District-Bhagalpur.
 3. Girija Devi wife of Late Suresh Mandal, Resident of Village-Dhini Nauwa Lane,Ps-Nath Nagar District-Bhagalpur.

.... Petitioners

Versus

Umesh Mandal, son of Gaya Mandal, Resident of Village-Dhini Nauwa Lane, P.S.-
Nath Nagar District-Bhagalpur.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Indeshwari Prasad Mandal, Advocate
For the Respondent/s : Mr. Deepak Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-04-2018

The appellants of Title Appeal No.81 of 1998 pending in the court of Additional District Judge (F.T.C. No.V), Bhagalpur have filed this writ application for setting aside the order dated 26.08.2011 whereby and whereunder the learned appellate court below refused to accept the documents of appellants in evidence under Order 41 Rule 27 read with Section 151 of C.P.C.

2. Heard learned counsel for the petitioners and the respondents.

3. It has been submitted that the petitioners had filed Title Suit No.160 of 1989 against the respondent for declaration of right, title, interest and possession over the suit land. After trial, the suit was dismissed against which the petitioners filed Title Appeal No.81 of



1998. During the pendency of appeal, the petitioners filed an application under Order 41 Rule 27 read with Section 151 of C.P.C. on 01.10.2010 for accepting the following documents in evidence.

- (i) Certified copy of rating register of the year 1958-59, 1976-77, demand register of the year 1958-59 issued by Bhagalpur Municipal Corporation,
- (ii) Original tax receipts issued by Municipal Corporation, Muzaffarpur in the name of Suresh Mandal,
- (iii) Zamindari rent receipts of the year 1933,
- (iv) Hukumnama

4. Learned counsel for the petitioners submits that at the time of survey operation, the appellants were residing at Lakhisarai and their Kachcha house got destroyed and all the documents which were in custody of appellants-plaintiffs were either destroyed or stolen away by someone and so the appellants could not file those documents before the trial court. The father's name of the appellants has been continuously coming in the rating register and the current rent receipt has been issued in his name. The said documents are necessary to be marked for adjudication of real controversy.

5. Learned counsel for the respondent, on the other hand, raised objection and submitted that the court below has rightly rejected the petition. According to the case of plaintiffs-appellants, the documents were either destroyed or stolen away and so the plaintiffs-appellants after manufacturing those documents are willing to get the same admitted in evidence which is impermissible at the appellate stage.

6. After hearing both sides and perusing the impugned order,



I find that the petitioners had filed title suit in the year 1989 which after contest was dismissed in the year 1998. The appeal was filed in 1998 and the petition for admitting some document was filed on 09.12.2004 i.e. after six years of filing of appeal. The said petition was rejected on 16.02.2006 and thereafter the appellants again filed petition after four years i.e. on 01.10.2010. The court below while rejecting the petition has observed that no explanation has been given by the appellants for filing the said documents after such a long delay. The court below has further observed that if the counterfoil of rent receipt was available in municipal corporation office, the plaintiffs-appellants could have filed those after obtaining the same before the trial court itself. The reason assigned by appellants was found not satisfactory and the court below accordingly rejected the petition by a reasoned order.

7. In view of above facts, I do not find any merit in this writ application to interfere with the impugned order under inherent jurisdiction. This writ application is accordingly dismissed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.04.2018
Transmission Date	

