

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18491 of 2013

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Nawal Kishore Singh @ Paras Singh Son Of Late Yamuna Singh Resident
Of Village - Padrauna, P.O. Hardia, P.S. Barharia, District - Siwan

.... Petitioner

Versus

1. Awadh Kishor Singh Son Of Late Yamuna Singh Resident Of Village -
Padrauna, P.O. Hardia, P.S. Barharia, District - Siwan
2. Kalawati Devi Wife Of Raj Bali Singh, Daughter Of Late Yamuna
Singh Resident Of Village - Gopalpur, P.O. And P.S .Pachrukhi, District
- Siwan
3. Chandrawati Devi Wife Of Jaishri Singh, Daughter Of Late Yamuna
Singh Resident Of Village - Baishakhi, P.O. Hardia, P.S. Pachrukhi,
District - Siwan
4. Ramawati Devi Wife Of Bairister Singh, Daughter Of Late Yamuna
Singh Resident Of Village - Nuruddinpur, P.O. And P.S. Barharia,
District - Siwan

.... Respondents

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Appearance :

For the Petitioner : Mr. Raghav Prasad, Advocate

For the Respondents : Mr. Ranjan Kumar Dubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

3 05-01-2018 This application has been filed to quash the order dated

04.04.2013 passed by learned Adhoc Additional District &

Sessions Judge-III, Siwan in Title Appeal No.31 of 1999 whereby

and whereunder the learned court below refused to accept the

additional documentary evidence of the petitioner under the

provision of Order 41 Rule-27(1)(a)(aa) of the CPC.

2. Heard learned counsel for the petitioner as well as the
respondents.

3. The petitioner being plaintiff before the court below



had filed Partition Suit No.158 of 2005 claiming share to the extent of 6/15 in the suit property mentioned in schedule-1, 2 and 3 of the plaint. The suit was dismissed against which the plaintiff filed title appeal no.31 of 2009 before the District & Sessions Judge-III, Siwan. During the pendency of the appeal, the plaintiff filed a petition under Order 41 Rule 27 read with Section 151 of the CPC along with copy of sale deed dated 15.09.2004, 27.08.2012, 15.10.2012 and 26.05.2010 for taking those document as evidence for proper adjudication of issues involved in the appeal. The learned court below as per impugned order dated 04.04.2013 refused to take those documents as evidence.

4. On perusal of impugned order and averments made in the petition, I find that most of the documents relate to period after disposal of the suit. Only the sale deeds dated 15.09.2004 were in existence at the time of filing of partition suit no.158 of 2005. The court below considering the provision of Order 41 Rule 27 has rightly rejected to admit the documents related to period after disposal of the suit. So far sale deeds dated 15.09.2014 are concerned, the same were in existence at the time of filing of the suit. It has been submitted that the petitioner had no knowledge about the sale deeds. In this regard, the learned counsel has relied on ruling reported in 2013 (1) PLJR (SC) page 48 wherein the



Hon'ble Apex Court has observed that application for taking additional evidence on record at appellate stage even if filed during the pendency, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. The Hon'ble Apex Court has further observed that in case, application for taking additional evidence on record has been considered and allowed prior to hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not remains in consequential/inexcutable and is liable to be ignored.

5. The hearing of an appeal has not commenced before the lower appellate court and so in view of above ruling, the appellate court below has committed error in disposing of the petition without hearing the appeal or going into the merit of appeal.

6. In view of the above facts, the impugned order dated 04.04.2013 rejecting the application filed under XLI rule 27 of the CPC is not sustainable and is set aside. The matter is remitted to the court below to dispose of the application only at the time of



hearing of the appeal.

7. This application is accordingly allowed.

(Sanjay Kumar, J)

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