

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1254 of 2016

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Smt. Shanti Devi wife of Dip Narain Sahu resident of Mohalla- Jankisthan, Ward No.2, P.S. & District- Sitamarhi.

.... Petitioner

Versus

1. Ramesh Bhagat son of Late Damari Bhagat resident of Jankisthan, Ward No.1, P.S. & District- Sitamarhi.
2. Mohan Bhagat son of Late Damati Bhagat resident of Mohalla- Jankisthan, Ward No.2, P.S. & District- Sitamarhi.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Rakesh Ranjan Verma
For the Respondent/s : Mr. Dronacharya
Mr. Alok Kumar Jha

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date: 25-04-2018

Heard both sides.

The petitioner filed this Civil Miscellaneous petition against the order dated 03.08.2016 passed in Title Appeal No. 45 of 2011 by learned District Judge, Sitamarhi, by which, the learned District Judge, Sitamarhi, dismissed the petition of the appellant filed under Order 41 Rule 27 of the Code of Civil Procedure.

The petitioner/appellant filed petition on 01.06.2016 in T.A No. 45 of 2011 to bring the order dated 18.01.2013 passed in Final Decree Case No.01 of 2004 and the reports of the Advocate Commissioner dated 16.07.2012 and 30.01.2013 submitted in aforesaid Final Decree Case No.01/2004 as additional evidence. Mohan Bhagat filed Partition Suit no. 63/1991 and the same was preliminary decreed. The Final Decree Case No. 01/2004 was initiated, in which parties filed compromise petition. On the basis of



which, final decree was passed.

Learned counsel for the petitioner submits that the order dated 18.01.2013 passed in Final Decree Case No. 01/2004 and the Pleader Commissioner's reports dated 16.07.2012 and 30.01.2013 are very relevant for the just decision of the case. Both the documents came in existence later on and those orders and documents are relevant for just decision of the case but the learned District Judge, Sitamarhi without considering the relevancy of the aforesaid documents, rejected the petition of the petitioner.

Mr. Dronacharya, learned counsel for the respondents submits that there is no question of preparation of final decree and the reports of the pleader commissioner are of no use for deciding the petitioners' case. Ramesh Bhagat never appeared in the final decree. On such, the learned counsel for the petitioner filed supplementary affidavit (Annexure-10) showing that Ramesh Bhagat filed petition in the final decree on 01.10.2015 and for correction in the boundary of the land allotted to the share of Ramesh Bhagat.

Having Considered the submissions of both sides, I find that the order was passed on 18.01.2013 in Final Decree Case No. 01/2004 and the Pleader Commissioner also submitted report on 16.07.2012 and 13.01.2013. The appellant wanted to bring on records these three documents as additional evidence. Order 41 Rule 27 of C.P.C provides that the appellate court may on three conditions as



contained therein allow the party to produce additional evidence. Admittedly, the order dated 18.01.2013 and Pleader Commissioner's report dated 16.07.2012 and 30.01.2013 which the appellant wanted to bring on record as additional evidence were not in existence at the time of decision of the suit during the pendency of T.A. No. 45/2011. Thus, reports were submitted and the order was passed in Final Decree Case No. 01/2004. Thus, I find that the documents are relevant for the just decision of the case but learned District Judge, without considering the fact and relevancy of the documents rejected the petition of the petitioner.

Accordingly, the order dated 03.08.2016 passed in Title Appeal No. 45 of 2011 is set aside and this Civil Miscellaneous petition is allowed.

The appellant is allowed to bring those documents on record as additional evidence, in accordance with law.

(Prabhat Kumar Jha, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.05.2018
Transmission Date	NA

