

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.16 of 2016

Smt. Arti Singh wife of Sri Brajesh Kumar Maurya resident of village Amba
P.S. and P.O. Bodh Gaya, District Gaya

... .. Petitioner/s

Versus

1. Smt. Rekha Rani Singh wife of Sri Ashok Kumar Singh, Resident of
Mohalla Nan Muhiya Shers Shah Road, P.S. Alamganj, District Patna 7.
2. Sri Ram Chandra Prasad son of late Gowardhan Mahto
Constituted Attorney Holder of Plaintiff, Resident of mohalla Nan Mukhiya
Shers Shah Road, P.S. Alamganj district Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ramchandra Sahni
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 09-01-2018

1. This civil miscellaneous petition has been filed for setting aside the order dated 14.03.2016 passed in Title Appeal No.1300 of 2014 by which the learned 4th Additional District Judge, Patna City dismissed the petition of the petitioner filed under Order 41 Rule 27.

2. The petitioner is the defendant in the suit. Plaintiff filed the suit for specific performance of contract stating therein that the petitioner executed a deed of agreement to sell a piece of land after taking part of the consideration amount. The petitioner refused to accept the remaining consideration amount and to execute the sale deed. The suit was decreed. The petitioner filed appeal. During the pendency of the appeal, the



petitioner filed petition under Order 41 Rule 27 C.P.C. for allowing him to bring on record the certificate of Post Master of Amwan post office showing the sending of letters on 30.06.2002, 04.10.2002, 10.12.2002 and 02.01.2003. The petitioner filed different letters sent through U.P.C. which were admitted in evidence as Ext. C series. After hearing both sides, the learned Additional District Judge on 14.03.2016, rejected the petition of the petitioner stating that the certificates are post litem mortem and all the certificates were created after the initiation of the proceeding and there is every possibility of concoction or putting up false pleas. Being aggrieved by the order aforesaid, the petitioner filed this petition.

3. The learned counsel for the petitioner submits that the petitioner has already brought on record the letters sent to the respondents through under postal certificate(U.P.C.). The letter shows that the petitioner requested the plaintiff time and again to pay the remaining consideration amount but the plaintiff never paid any amount. The post master of the post office issued certificates certifying that the petitioner sent letters to the plaintiff under postal certificate(U.P.C.). The learned counsel for the petitioner further submits that Order 41 Rule 27 gives power to the appellate court that the appellate court may permit



additional evidence and the appellate court may, even if the petition under Order 41 rule 27 is filed during the pendency of the appeal, shall hear the same petition 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. It is submitted that in case the appellate court considers to keep the application for taking additional evidence on record. The order is absolutely illegal and on account of non-application of mind as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential and is liable to be ignored. The learned counsel for the petitioner placed his reliance on para 38 to 41 of the judgment of the Apex Court [Union of India v. Ibrahim Uddin & Anr. reported in 2013(1) PLJR 48(SC)] and submitted that the order rejecting the petition of the petitioner for allowing him to adduce additional evidence is fit to be set aside.

4. On the other hand, the learned counsel for the respondents submits that the appellate court may permit additional evidence only and only if the conditions laid down in Order 41 rule 27 exists. Order 41 Rule 27 is not designed to help party to patch



up lacuna or make up for own omissions earlier made. Learned counsel for the respondents placed his reliance on the judgment of the Supreme Court reported in (2001) 7 Supreme Court Cases 503(N.Kamalam(Dead) and another v. Ayyasamy and another) in which it has been held that Order 41 Rule 27 is not meant to allow a party to make up or fill up the lacuna and omissions. Learned counsel for the respondents further placed his reliance on a single bench judgment of this Court reported in 2007(1) PLJR 489(Arbind Sharma @ Pappu Sharma & Anr. v. Ram Chander Sharma).

5. On the basis of the submissions, the only question arises for consideration as to “whether the learned Additional District Judge committed any illegality or jurisdictional error in rejecting the petition of the petitioner filed under Order 41 Rule 27 C.P.C.?”

6. In view of the provisions as contained in Order 41 Rule 27, it appears that provision says that the appellate court may allow a party to adduce additional evidence subject to the condition that if any such evidence the court whose judgment and decree under appeal rejected the evidence of a party to bring on record. Secondly, if a party even after exercise of all due diligence could not be able to bring such document or evidence



on record during the pendency of the suit, the judgment and decree which is under appeal. Thirdly, if the court finds that any evidence is required to be brought on record in order to deliver the judgment.

7. From the facts of the case, it appears that the petitioner has already brought on record the letters said to have been sent by him to the plaintiff requesting him to pay the remaining consideration amount and all such letters are marked as Ext. C series. The petitioner never produced the certificate issued by the Post Master certifying the issuance of letters sent by the petitioner under postal certificate. When the trial court expressed his opinion about the genuineness of such letters Ext. C series, in order to show the willingness of the petitioner to execute the sale deed and suit was decreed. The petitioner in appeal filed the petition for bringing such certificates on record by way of additional evidence. Under Order 41 Rule 27, the appellate court can allow a party to adduce additional evidence only and only if three conditions enumerated under Order 41 Rule 27(1), 1(a), 1(aa) and 1(b) are satisfied. Moreover, the learned Additional District Judge has found that the certificates are post litem and there is every possibility of concoction and fabrication of such documents created after institution of the



suit.

8. In the case of Arbind Sharma(supra), this Court has clearly held that the additional evidence can be adduced only on fulfilling the conditions mentioned in Order 41 rule 27 that when the trial court illegally rejected some evidence intended to be brought on record or when during the course of trial, the document in question was not within the knowledge of the party even after the exercise of due diligence by him and the party establishes and is able to show before the court that could not after exercise of due diligence produce the said documents at the time when decree, appeal was passed. In the present case, there is no condition as enumerated in Order 41 Rule 27 is fulfilled.

9. In the case of Union of India v. Ibrahim Uddin(supra), on which the learned counsel for the petitioner placed his reliance, it has been held that unless the condition as enumerated in Order 41 Rule 27 for taking additional evidence are fulfilled only then the parties are entitled as of right to the admission of such evidence. The third condition is that if the appellate court can pronounce a satisfactory judgment without allowing the party to adduce the additional evidence, the condition does not apply. In N.Kamalan(supra) case, the Apex Court has held that a party should not be allowed to adduce



additional evidence after a long interval and on non-fulfillment of the conditions enumerated in Order 41 Rule 27 of the Code.

10. Having considered the facts aforesaid, I find that the learned Additional District Judge has rightly dismissed the petition of the petitioner filed under Order 41 Rule 27 C.P.C. for allowing him to adduce additional evidence and the order does not suffer from any jurisdictional error or material irregularity.

11. In the result, this civil miscellaneous petition is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.01.2018
Transmission Date	

