

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1916 of 2017

Vijay Kumar Singh Son of Late Ram Bilash Singh Resident of Village :
Charkawan, Upardih, P.O. and P.S. Rafiganj, District : Aurangabad (Bihar).

... .. Petitioner

Versus

1. Most. Soni Kuer Wife of Late Rajendra Mistri
2. Ranjit Kumar
3. Sujit Kumar Sons of Late Rajendra Mistri
4. Anita Devi Daughter of Late Rajendra Mistri Sl. Nos. 1,2,3 and 4 are residents of Village : Charkawan, Mahmood Tole, Maharajganj, P.O. & P.S. Rafiganj, District : Aurangabad (Bihar).
5. Most. Lal Pari Kuer Wife of Late Ram Bilash Singh
6. Ashok Kumar Singh
7. Brijnandan Singh
8. Pramod Singh Sons of Late Ram Bilash Singh Sl. Nos. 5,6,7 and 8 are residents of Village : Charkawan Upardih, P.O. & P.S. : - Rafiganj, District : - Aurangabad (Bihar).

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mrigendra Kumar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 06-12-2018

Heard the learned counsel for the petitioner.

2. Petitioner has filed this civil miscellaneous petition against the order dated 09.08.2017, passed by learned District Judge, Aurangabad in Eviction Appeal No.02 of 2016 by which the learned District Judge allowed the petition of the appellants filed under Order 41 Rule 27 of the CPC for bringing some documents on record as evidence.

3. The petitioner is plaintiff. The petitioner filed Title Eviction Suit No.10 of 2000 in which the husband of the appellant



no.1 appeared and contested the suit. The suit was decreed. The appellants who are widow and sons of the defendants after filing the appeal filed petition under Order 41 Rule 27 of the CPC stating therein that since the defendant no.1 who was contesting the suit after his appearance became traceless in the mid of hearing of the suit and he could not bring all those relevant documents on record, therefore, the appellants were not in knowledge of those documents but got the aforesaid documents after filing the appeal and be allowed to bring on those documents in appeal as evidence. The plaintiff-petitioner objected the petition filed by the appellants under Order 41 Rule 27 of the CPC. The learned District Judge allowed the petition of the appellants vide order dated 09.08.2017 and being aggrieved by petitioner has filed this civil miscellaneous petition.

4. Learned counsel for the petitioner submits that the husband of appellant no.1 and fathers of other appellants contested the suit, examined four witnesses but thereafter he left attending the court. According to Order 13 Rule 1, the parties are obliged to file all the relevant documents before settlement of the issues but the defendant who was contesting the suit did not file any document. The suit was decreed. Thereafter the legal heirs of the defendant filed present title eviction appeal and also filed the



present petition for allowing them to adduce additional evidence under Order 41 Rule 27 of the CPC. It is further submitted that Order 41 Rule 27 (1) prescribes three conditions for allowing a party to adduce additional evidence at the appellate stage. The first condition is that if the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted. This is not a case that the defendant produced any document and the same was rejected. The second condition is that 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 and the third condition is that if the appellate court requires any document to be produced or any witness to be examined to enable him to pronounce judgment, or for any other substantial cause, it is submitted that the appellants have not stated any facts in their petition about the recovery of those documents and non-production of those documents during the trial of the suit, therefore, none of the condition is fulfilled but the learned District Judge allowed the petition illegally and erroneously.



5. On perusal of the order impugned, I find that the appellants who were widow and sons of defendant no.1 were not aware of the pendency of the eviction suit filed by the petitioner. The defendant no.1 was contesting the suit and in the mid of hearing of the suit the defendant no.1 became traceless after examination of four defendant witnesses. The defendant contested the suit on the pleadings that the suit land was settled in his favour by the ex-landlord and there is no relationship of landlord and tenant between the plaintiff and defendant. When the defendant no.1 became traceless the suit was decided without allowing the defendant to produce any documentary evidence as the fact of defendant no.1 being traceless could not be brought to the knowledge of the court. When the suit was decreed, the legal heirs of defendant no.1 appeared and got knowledge about the fact that the suit was decreed against them. Thereafter they filed appeal and also filed petition stating the facts that they had no knowledge about pendency of the suit and when the suit was decreed they came to know that the suit was decreed. The appellants got certain documents which have got bearing on the merit of the case. On consideration of these facts, the learned District Judge allowed the petition of the appellants for adducing additional evidence. Rule 27(1)(b) of Order 41 clearly envisages that 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. From the facts disclosed by the appellants, it is evident that the appellants could not after her husband and father becomes traceless contest the case as they were ignorant of the pendency of the suit. After decree was passed, the appellants came to know and filed appeal, therefore, I find that the appellants have been able to bring their case within the purview of Rule 27(1)(b) of Order 41 and the learned District Judge, Aurangabad has rightly allowed the petition of the appellants for bringing additional evidence.

6. Having considered the facts aforesaid, I do not find any merit in this civil miscellaneous petition and the same is dismissed accordingly.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
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