

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16722 of 2013

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1. Shrawan Sah S/O Late Shukar Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
 2. Prem Sah S/O Sri Shrawan Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
 3. Raj Kumar Sah S/O Sri Shrawan Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
 4. Shatrughan Sah S/O Sri Shrawan Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
 5. Most. Merkha Devi W/O Late Nageshwar Sah @ Naga Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
 6. Jitu Sah @ Jitendra Sah S/O Late Nageshwar Sah @ Naga Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
 7. Dharmendra Sah S/O Late Nageshwar Sah @ Naga Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui

.... Petitioners

Versus

1. Most. Kamla Devi W/O Late Ram Shwaroop Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
2. Renu Devi D/O Late Ram Shawroop Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
3. Munni Devi D/O Late Ram Shawroop Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
4. Ashok Sah S/O Late Budhan Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
5. Kishori Sah S/O Late Ram Shawroop Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
6. Sanjay Kumar Sah S/O Late Ram Shwaroop Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
7. Sunil Kumar Sah S/O Late Ram Shawroop Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
8. Sudhir Kumar Sah S/O Late Ram Shwaroop Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
9. Sanjib Kumar Gupta S/O Late Ram Shwaroop Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
10. Sujit Kumar Gupta S/O Ashok Sah Resident Of Mohalla- Mahisauri, Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
11. Ajit Kumar Gupta S/O Ashok Sah Resident Of Mohalla- Mahisauri,



Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
12. Pawan Kumar Gupta S/O Ashok Sah Resident Of Mohalla- Mahisauri,
Ward No. 14, (Under Municipality Jamui), P.O., P.S. & District- Jamui
13. Pawan Kumar S/O Mohan Yadav Resident Of Village- Kundhur,
Gidhaur, District- Jamui

.... Respondents

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Appearance :

For the Petitioners : Mr. Jitendra Kishore Verma, Advocate
For the Respondents : Mr. Krishna Chandra, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

4 08-01-2018 This application has been filed to set aside the order dated 01.03.2013 passed by learned Additional District Judge- Jamui in Title Suit No.07 of 2011 whereby and whereunder the petitioners petition filed under XLI Rule 27 read with Section 151 of the CPC was rejected.

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

3. It appears that the petitioners were plaintiff before the court below. The suit for declaration was dismissed against which the petitioners filed Title Appeal No.07 of 2011. During the pendency of the appeal, the petitioners filed petition under Order Rule XLI 27 of the CPC along with certified copy of Khatian of Khata No.31 and 52. The defendant denied the existence of said survey khatian. The court below rejected the prayer of the petitioners observing that the petitioners have not explained in satisfactory manner as to from where they obtained the certified



copy. In this regard, learned counsel for the petitioners cited ruling reported in 2013(1) PLJR page-48 wherein the Hon'ble Apex Court has observed that application for taking additional 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 inconsequential/inexecutable and is liable to be ignored.

4. 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.

5. In view of the above facts, the impugned order 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.

6. This application is accordingly allowed.

(Sanjay Kumar, J)

B.Kr./-

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