

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19697 of 2014

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Mithila Devi wife of Nageshwar Mahto, resident of Mohalla - Koat Bazar, Ward No. 18 (old), Middle - 23 and New 9, P.S. & District – Sitamarhi.

.... Petitioner/s

Versus

Shankar Mahto S/o Late Chote Mahto, resident of Maholla - Koat Bazar, Ward No. 18 (old), Middle - 23 and New - 9, P.S. and District – Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh, Adv.

Ms. Vagisha Pragya Vacaknavi, Adv.

For the Respondent/s : Mr. Manu Tripurari, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-09-2018

Petitioner before this Court is plaintiff-appellant in lower court. She has filed this writ application for quashing the order dated 18.09.2014 passed in Eviction Appeal No. 16 of 2012 whereby and whereunder the court below refused to admit the documents filed by the petitioner under Order XLI Rule 27 of Code of Civil Procedure.

2. Heard learned counsel for the petitioner and perused the record.

3. This petitioner filed an Eviction Suit No. 4 of 2005 against the respondent for his eviction which after trial was dismissed. Thereafter, the aforesaid Eviction Appeal No. 16 of 2012 was filed. During the pendency of said appeal, the petitioner filed two certified copies of registered sale deeds dated 02.07.1991 bearing Deed Nos.



2263 and 2265 and prayed to admit these documents in evidence.

4. The court below after hearing both sides refused to admit those documents observing that no satisfactory explanation was given by this petitioner for filing the said documents at the appellant stage.

5. On going through the submission of learned counsel for the petitioner, I find that the petitioner claimed the suit property by virtue of family arrangement. The respondent before this Court is full brother of the husband of the petitioner. She has purchased the land in question from the defendant and his father by virtue of registered sale deed dated 23.09.1997. The respondent-defendant denied the execution of said sale deed in favour of the plaintiff. The court below, considering bona fide land dispute between the family members and also observing that the plaintiff has failed to establish the relationship of landlord and tenant, has dismissed the suit. It has been submitted that the respondent is a literate person and he along with his father had executed two registered sale deeds dated 02.07.1991. These two documents would be relevant in deciding the issue as to whether the respondent is a literate person or not. The respondent in his rejoinder has not denied the genuineness of the aforesaid sale deeds. He has not denied the execution of said sale deeds by him and so these two documents appear to be admitted documents. The petitioner has



asserted that she had no knowledge about the said two documents and on getting information she immediately obtained certified copies of documents and filed the same before the appellant court. The court below has erred in observing that the petitioner has failed to explain the reasons for not filing those documents at early stage. I further find that the court below without considering the relevancy of those documents and without entering into hearing has dismissed the said petition. In this regard, the learned counsel for the petitioner referred a case of Union of India vs. Ibrahim Uddin reported in 2013 (1) PLJR 48 [SC] wherein the Hon'ble Apex Court at paragraph 38 of the judgment has considered the admissibility of additional evidence at the stage of appeal. The Hon'ble Apex Court at paragraphs 38 and 41 has observed, as follows:-

Para 38 *“An application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and /or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the*



conclusion that some inherent lacuna or defect becomes apparent to the Court.

Para 41 *Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, 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. In case, application for taking additional evidence on record has been considered and allowed prior to the 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. In the instant case, the application under Order XLI Rule 27 CPC was filed on 6.4.1998 and it was allowed on 28.4.1999 though the first appeal was heard and disposed of on 15.10.1999. In view of law referred to hereinabove, the order dated 28.4.1999 is just to be ignored.”*

6. In the case at hand I find that the petitioner was not aware of those documents before trial court. These documents appear relevant for deciding the issue as to whether the respondent is literate person or not. I find that the court below has erred in rejecting the petition without considering the relevancy of these documents. The said documents appear essential for adjudication of dispute between the parties.

7. In view of above facts and principles laid down by the Hon’ble Apex Court, I find that the impugned order is not sustainable and is accordingly set aside. The court below is directed to consider



the said documents at the time of hearing of the appeal.

8. This writ application is allowed.

(Sanjay Kumar, J)

Mahesh/-

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

