

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1215 of 2016

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1. Pramod Kumar son of Late Ruplal Sao
 2. Arun Kumar Son of Late Ruplal Sao
 3. Arbind Kumar son of Late Ruplal Sao All residents of mohalla - Dayachak, Ward No. 12 (old) ward no. 26 and 27 (New) Holding No. 91 P.S. + P.O. - Barh, District - Patna.

.... Petitioners/Appellant/s

Versus

1. Umesh Sao @ Umesh Prasad Sao son of Late Janak Sao
2. Ashish Kumar @ Babloo son of Umesh Sao
3. Ajay Kumar @ Karoo Son of Umesh Sao
4. Bittu son of Umesh Sao All residents of mohalla - Dayachak, Ward No. 12 (old) ward no. 26 and 27 (New) Holding No. 91 P.S. + P.O. - Barh, District - Patna.
5. Srawan Kumar son of Late Ruplal Sao Resident of mohalla - Dayachak, Ward No. 12 (old) ward no. 26 and 27 (New) Holding No. 91 P.S. + P.O. - Barh, District - Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dr. Anshuman, Advocate
Mr. Sanjay Kumar, Advocate
For the Respondents : Mr. Sanjay Kumar Ghosarvey, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 14-03-2018

Heard both sides.

The petitioners filed this Civil Misc. petition against the order dated 3.5.2016 passed by Additional Judge-VI, Barh in Title Appeal No.177 of 1996 by which the petition of the petitioners filed under Order 41 Rule 27 CPC has been rejected.

The petitioners are the plaintiffs of Title Suit No.68 of 1988. The suit was dismissed. The petitioners filed appeal. During the pendency of the appeal, the petitioners filed petition that the certified



copy of the order passed in Mutation Appeal No.21 of 1988-89 and the photo copy of original Jamabandi from Sl.Nos.48 to 56 filed in Compensation Case No.283/1956-57 be admitted in evidence. Learned Additional District Judge vide order dated 3.5.2016 dismissed the petition of the petitioners.

Learned counsel for the petitioners submits that the learned Additional Judge has erroneously and illegally rejected the petition of the petitioners on the ground that the petitioners had knowledge about the order passed in Mutation Appeal No.21/1988-89 during the pendency of the suit and the photo copy of Jamabandi was filed during the pendency of the suit but since the original record was not made available by the Circle Officer and the learned Sub Judge vide order dated 21.7.1995 rejected the petition that the photo copy could not be exhibited as evidence. It is submitted that both these documents are very essential for just decisions of the dispute between the parties.

Learned counsel for the respondents submitted that the condition as enumerated in Order 41 Rule 27 of the CPC for adducing additional evidence during the appellate stage are not fulfilled. The suit was of the year 1988. The appellants did not file the certified copy of Mutation Title Appeal No.21/1988-89 during the pendency of the suit. It is further submitted that photo copy of the Jamandi record



could not be exhibited and taken into evidence in absence of its original and during the pendency of the suit itself vide order dated 21.7.1995, the trial court rejected the petition of the petitioners-plaintiffs admitting the photo copy of Jamabandi return in evidence on the ground that the original is not made available and the photo copy could not be admitted in evidence in accordance with law. Learned counsel for the respondents placed reliance on the Single Bench of this Court rendered in Civil Miscellaneous No.1032 of 2016 on 8.11.2016.

Having considered the submissions of both sides and on perusal of records, it appears that the petitioners filed petition during the pendency of the appeal that the certified copy of the order passed in Mutation Appeal No.21/1988-89 by the DCLR along with the photo copy of the Jamabandi register be admitted as additional evidence. It is further submitted that these two documents are relevant of the just decisions of the dispute between the parties. It is submitted that the defendants have produced the letter issued by Circle Officer, Barh as Ext.J and the certified copy of Jamabandi return in Compensation Case No.283/1956-56 as Ext.K. The petitioners alleged that the certified copy was issued after making interpolation in original Jamabandi. When the Court called for original record and register of Jamabandi filed in Compensation Case No.283/1956-57,



the Circle Officer reported that the record is not traceable but the court below without taking into consideration the relevancy of the two documents certified copy of the order passed in Mutation Appeal No.21/1988-89 and the photo copy of the original Jamabandi register out-rightly rejected the petition that the petitioners-appellants were having knowledge about these two documents. Order 41 Rule 27 of the CPC says that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if- (a) the court from whose decree the appeal is preferred has refused to admit evidence which out to have been admitted, or (aa) the 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, or (b) the Appellate Court requires any document to be produced or any witnesses to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined. The case of the petitioners admittedly come within sub clause (aa) of Rule 27 and Order 41. The petitioners have categorically stated that the order passed in Mutation Appeal No.21/1988-89 was not within his knowledge and he could



not bring those records in evidence which has got direct bearing in resolving the disputes between the parties. The petitioners alleged that the certified copy of register of Jamabandi filed in Compensation No.283 of 1956-57 is forged one and the original is made traceless. Therefore, the photo copy is very much essential for comparison of the certified copy of the Jamabandi register in order to find out its genuineness.

Therefore, I find that the learned Additional Judge, who without looking into the documents and its relevancy rejected the petition and thereby he failed to exercise jurisdiction vested in him by law.

Accordingly, the order dated 3.5.2016 is set aside and Civil Misc. is allowed.

(Prabhat Kumar Jha, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21-03-2018
Transmission Date	

