

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1361 of 2016

1. Jyotiswar Prasad Singh
2. Gulab Singh
3. Pratap Singh
4. Chandan Singh All Sons of Late Jagdish Singh, resident of Village- Basudhar, P.S.- Itarhi, District- Buxar.

... .. Transposed plaintiffs/Respondents/Petitioners
Versus

1. Rambha Singh D/o late Bhupal Singh, Wife of Upendra Singh Resident of Village- Utari, P.O. Rauni, P.S.- Rajpur, District- Buxar.
2. Most. Jagarasana Devi Wife of late Bhupal Singh
3. Sidheshwar Singh
4. Niranjana Singh
5. Kusum Devi Daughter of late Bhupal Singh, Wife of Dinesh Singh Resident of Village- Debariya, P.S. Dhanapur, Distt- Chandaul, Uttar Pradesh.
6. Lav Kumar Singh All Sons of late Bhupal Singh, All resident of Village- Basudhar, P.S. Itarhi, District- Buxar.

... ..Plaintiffs/Appellants/Respondent 1st Set

7. Sheo Chandra Singh, S/o Late Sheo Badan Singh.
8. Uma Shankar Keshari S/o Late Udaichandra Keshri
9. Suraj Yadav
10. Sri Nath Yadav.
11. Sidhnath Yadav
12. Ram Bachan Yadav All Sons of Late Hari Bansh Yadav.
13. Phagu Yadav
14. Bhim Yadav All Sons of Sri Yadav. All resident of Village- Basudhar, P.S.- Itarhi, District- Buxar.

... .. Defendants/Respondents 3rd Set/Respondents 3rd Set

Appearance :

For the Petitioners	:	Mr. Ajay Kumar Singh, Advocate
For Res. 1 st Set	:	Mr. Aditya Narayan Singh-1, Advocate Mr. Nirbhay Prashant, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 25-10-2018

Heard the learned counsel appearing on behalf of the
petitioners and the learned counsel appearing on behalf of
respondents 1st set, the substituted legal heirs of Bhupal Singh.



2. The petitioners filed this civil miscellaneous petition against the order dated 17.10.2016, passed by the learned District Judge, Buxar in Title Appeal No.26 of 2015 by which the petition filed by the respondents 1st set under Order XLI Rule 27 was allowed and the learned District Judge directed the court below to take oral evidence and returned the record to the appellate court.

3. Mr. Ajay Kumar Singh, the learned counsel appearing on behalf of the petitioners submits that admittedly Bhupal Singh, respondent no.1, now dead, filed Title Partition Suit No.176 of 2009 for partition of the property mentioned in the Schedule of the plaint. The petitioners filed petition under Order I Rule 10 to implead them as defendants in the suit on the ground that earlier the plaintiff had filed title suit for partition of the same property and it was found in the aforesaid title partition suit that the petitioners are entitled to get 2 Anas share in the suit property but the aforesaid partition suit was abated under Section 4(c) of the Consolidation Act, therefore, the preliminary judgment and preliminary decree could not be taken effect. The petition of the petitioners for being impleaded as defendants was allowed. Later on the plaintiff-respondent 1st set stopped appearing in the suit and thereafter the petitioners filed petition for their transposition in Title Suit No.176 of 2009 as plaintiffs. The same was allowed. The



plaintiffs adduced their evidence and the suit was decreed. 2 Anas share was allotted to the transposed plaintiffs-petitioners. Thereafter the original plaintiff filed Title Appeal No.26 of 2015 and also filed petition for stay of the preparation of final decree along with the petition under Order XLI Rule 27. The petition filed under Order XLI Rule 5 of the CPC was dismissed by the same order but at the same time the learned District Judge allowed respondent 1st set to adduce documentary evidence as well as oral evidence although the respondent 1st set did not make any prayer for adducing oral evidence. It is further submitted that if the documents filed by the original plaintiff are taken in evidence, the petitioners have got no objection but oral evidence ordered to be taken is unnecessary and the same is not permissible unless the court records finding that the oral evidence is necessary for just decisions of the case. The suit is based on the documents, therefore, that part of the order of the learned District Judge is illegal. On the other hand, Mr. Aditya Narayan Singh, the learned counsel for the respondent 1st set submits that Order XXI Rule 27 vests power in the court to allow the party to adduce oral evidence as well but when his attention was drawn to the facts that the respondent 1st set-appellant did not file petition for adducing any oral evidence, Mr. Aditya Narayan Singh concedes that the



appellant-respondent 1st set filed petition only to adduce two documents as additional evidence in the appeal.

4. Having considered the facts aforesaid, I find that so far the admission of documents such as Khatiyan and rent receipts as evidence in appellate stage, no objection is raised on behalf of the petitioners but the order allowing the appellant-respondent 1st set to adduce oral evidence is not at all required. No finding to this effect is recorded by the learned District Judge that the oral evidence is required for just decision of the case nor the appellant made any prayer for allowing them to adduce oral evidence. Accordingly, I find that the learned District Judge, Buxar has committed jurisdictional error by allowing the appellant-respondent 1st set to adduce oral evidence and that part of the order is set aside.

5. The civil miscellaneous petition is accordingly partly allowed as aforesaid.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.10.2018
Transmission Date	NA

