

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1392 of 2016**

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1. Arun Prasad Singh Son of Brahmdeo Singh Resident of Village- Chitaura, P.O.- Hathiyawan, P.S.- Mehuns, District- Sheikhpura.

.... Petitioner/s

Versus

1. Awadh Pandey Son of late Ramjee Pandey
2. Umakant Pandey@Munna S/o Awadh Pandey
3. Sikandar Pandey Son of Awadh Pandey All resident of Village- Chitaura, P.O. -Hathiyawan, P.S.- Mehuns, District Sheikhpura.
4. Balmiki Pandey S/o Sri Awadh Pandey
5. Arun Kumar Pandey S/o Sri Awadh Pandey Both resident of Village- Chitaura, P.O. - Hathiyawan, P.S.- Mehuns, District -Sheikhpura.
--Defendants 2nd set/Respondents 2nd set
6. Sheela Kumari D/o- Sri Awadh Pandey, Wife of -Rajeev Nandan Pandey Resident of Village- Pokhrama, P.S.- Suryagarha, District- Lakhisarai.
-- Defendant 3rd set/Respondent 3rd set
7. Tarun Prasad Singh S/o Brahmdeo Singh
8. Barun Kumar S/o Brahmdeo Singh
9. Rajeev Kumar S/o late Balmiki Singh All resident of Village- Chitaura, P.O. -Hathiyawan, P.S.- Mehuns, District Sheikhpura.

.... Defendants 4th set/Respondents 4th set

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Singh
Mr. Pramod Kumar
For the Respondent/s : Mr. Lakshmi Kant Tiwary
Mr. Anil Kumar

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER**

3 30-01-2018 Heard both sides.

The petitioner has filed this civil miscellaneous petition against the order dated 03.08.2016 passed by the District Judge, Sheikhpura in Title Appeal No.8 of 2014/1 of 2015.

The petitioner is defendant 1st set in the title suit. The plaintiff-respondent No.1 filed title suit for setting aside the sale



deed executed by his two sons, Balmiki Pandey and Arun Kumar Pandey, respondent Nos.4 and 5-defendants 2nd set in favour of the petitioner. The petitioner appeared and filed written statement stating therein that two sons, vendors of the petitioner were separate from their fathers and they executed the sale deeds in favour of the petitioner with regard to the lands falling in their share. The suit was dismissed. The plaintiff filed Title Appeal No.8 of 2014/1 of 2015. The petitioner filed petition under Order 41 Rule 27 of the C.P.C. for adducing additional evidence by producing four sale deeds executed by the appellant-respondent No.1 namely, Awadh Pandey on 11.03.2014, 16.03.2014, 06.11.2014 and 26.02.2015 in favour of different persons and stated that these sale deeds are relevant in order to show that the appellant has dealt separately and sold the property falling in his share but the learned District Judge without giving any reasons with regard to the relevancy of the documents rejected the petition of the petitioner on 03.08.2016. The petitioner being aggrieved by this order, moved before this court in the present case.

The learned counsel for the petitioner submits that all four sale deeds are very much relevant for just decision of the case. The appellant himself executed many sale deeds during the pendency of the suit. The petitioner was not having knowledge



about the execution of the sale deeds by the appellant and when the petitioner came to know about the execution of the sale deeds by the appellant, the petitioner obtained certified copy and filed petition to bring all those four sale deeds on record by way of additional evidence and to exhibit them but the learned District Judge without giving any reason dismissed the petition. Order 41 Rule 27 C.P.C. enumerates conditions for adducing additional evidence and if any of the conditions enumerated in Rule 27 of Order 41 of the C.P.C. is fulfilled, the Court should allow the petition and, therefore, the order of the District Judge is illegal and not sustainable.

On the other hand, learned counsel for the respondent Nos.1 to 3 has submitted that the learned District Judge has stated the reasons that documents are not at all relevant. The petitioner filed counter-claim in the suit but the counter-claim of the petitioner has been negatived although, the suit was also dismissed against which the respondent No.1 has filed appeal and the sale deeds are not at all relevant for the decision of the case. It is submitted that in the case of Union of India v. Ibrahim Uddin and Anr., 2013(1) PLJR 48(SC), the Supreme Court has reiterated the principle that the 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 is required in order to pronounce the judgment or for any other substantial cause.

The question falls for consideration is “whether the order of the District Judge suffers from any illegality?”

For that, it is necessary to reproduce Order 41 Rule 27

C.P.C. which reads as follows:

“27. Production of additional evidence in Appellate Court.- (1) 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 ought 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 witness 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.**
- (2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”**

From perusal of the aforesaid Rules, it appears that there are three conditions prescribed for producing additional



evidence. The first is that when the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted. The second is that 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 and the third condition is that the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.

Reverting to the facts of the present case, it is evident that petitioner-respondent 1st set filed the petition for adducing additional evidence stating therein that four sale deeds were executed by the appellant during the pendency of the suit/appeal. Therefore, these four sale deeds are relevant in order to show that the property was dealt with severally by the appellant and his sons and it appears that case of the petitioner comes within second condition of Rule 27(1)(aa) of Order 41 and the petitioner has very much stated that he was not having any knowledge about the execution of sale deeds by the appellant during the pendency of the suit and when he came to know about the facts, he obtained the



certified copy and immediately thereafter filed the petition to bring on record aforesaid sale deeds by way of additional evidence but from perusal of the order of the District Judge, it appears that the District Judge has not assigned any reason for rejecting the petition of the petitioner although it has also been held in the case of Union of India v. Ibrahim Uddin & Anr. (supra) that the Court must assign reasons and admit the additional evidence during the course of appeal only if the conditions enumerated in Rule 27 of Order 41 are fulfilled.

Therefore, I find that the order suffers from non-reasoning and material irregularity. Accordingly, the same is not sustainable. The civil miscellaneous petition is allowed. The order dated 03.08.2016 passed by District Judge, Sheikhpura in Title Appeal No.8 of 2014/1 of 2015 is set aside with a direction to the appellate court to admit the documents by way of additional evidence in accordance with law and proceed further in hearing of the case.

(Prabhat Kumar Jha, J)

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