

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.124 of 2019

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Birendra Kumar Sah Son of Late Ashok Kumar Verma Resident of 3A,
Opposite Central Bank, Shopping Complex, Mahendru, P.O.- Mahendru, P.S.-
Sultanganj, District- Patna

... .. Appellant/s

Versus

1. The State of Bihar through the District Collector, Supaul
2. The Superintendent of Municipal Survey, Supaul
3. The Circle Officer, Supaul
4. Ashok Kumar Yadav Son of Late Mahabir Prasad Yadav Resident of Village-
Suk Kumarpur, Ward No.3, Nagar Parishad, Supaul, P.S. and District- Supaul
5. Dhruv Kumar Sah Son of Late Ashok Kumar Verma Resident of Mohalla-
Supaul Nagar Parishad, Ward No.19, Mahabir Chowk, P.S. and District-
Supaul
6. Mithilesh Kumar Sah Son of Late Ashok Kumar Verma Resident of Mohalla-
Supaul Nagar Parishad, Ward No.19, Mahabir Chowk, P.S. and District-
Supaul
7. Ranjeet Kumar Sah Son of Late Ashok Kumar Verma Resident of Mohalla-
3A Opposite Central Bank Shopping Complex, Mahendru, P.O. and P.S.-
Sultanpur, District- Patna
8. Bablu Kumar Sah Son of Late Ramchandra Prasad Resident of Mohalla-
Kajibagh, P.O. and P.S.- Gulzarbagh, District- Patna
9. Most. Krishna Devi W/o Late Lal Babu Gupta Resident of Mohalla- Kajibagh
(Radha Babu Bagicha), P.O. and P.S.- Gulzarbagh, District- Patna
10. Santosh Kumar Son of Late Lal Babu Gupta Resident of Mohalla- Kajibagh
(Radha Babu Bagicha), P.O. and P.S.- Gulzarbagh, District- Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Amrit Abhijat
For the Respondent/s : Mr.Md. Khurshid Alam (AAG12)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 04-02-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution
of India has been filed by the petitioner for setting aside the order
dated 05.12.2018 passed by the learned District Judge, Supaul in
Title Appeal No. 28 of 1994 dismissing the application of the



petitioner, who is substituted defendant in the suit, dated 04.01.2017, whereby the application preferred under Order 41, Rule 27 of the Code of Civil Procedure (for short 'CPC') to admit the date of birth certificate of the petitioner issued by the Bihar School Examination Board, Patna has been rejected.

3. Learned counsel for the petitioner submitted that father of respondent Ashok Kumar Yadav had filed Title Suit No. 182 of 1991 in the court of Munsif, Supaul for declaration of right, title and possession with respect to the lands mentioned in different schedule of plaint as during publication of town survey khatian the land has been recorded in favour of State of Bihar although he has purchased the land from one Smt. Rukmani Devi, wife of Ashok Kumar Sah and her son Dhrub Kumar Sah, with a further prayer to declare entry of land in favour of the State of Bihar as illegal and not binding upon the plaintiff.

4. In the suit, the petitioner was not impleaded as defendant, but his father Ashok Kumar Verma was impleaded as defendant and after contest learned Munsif dismissed the suit upholding the creation of record of right in favour of the State of Bihar, vide judgment dated 14.06.1994. After losing Title Suit No. 182 of 1991, Late Mahabir Prasad Yuadav preferred Title Appeal No. 28 of 1994 before the learned District Judge, Saharsa.



5. The title appeal had been admitted and notices were issued to the defendants of the suit. The suit was subsequently transferred to the learned District Judge, Supaul. During pendency of the appeal, the father of the petitioner died. Thus, he was substituted as respondent in the case and notice was issued to him. Thereafter, he came to know about the case, sought legal opinion and was advised to file reply in the form of written statement as he was necessary party to the suit. Though he was not impleaded as defendant in the original suit, he was impleaded as respondent in the suit after death of his father.

6. He further contended that before the appellate court the petitioner pleaded that land in question was inherited by father of the petitioner from his late maternal grandfather Radha Krishna Lal. He died in the year 1955 leaving behind Guljaro Devi, his only daughter, as sole legal heir and representative. His grandmother died in the year 1974 leaving behind three sons (i) Ashok Kumar Verma, (ii) Ramchandra Prasad and (iii) Lal Babu Gupta.

7. He further contended that an application under Order 26, Rule 17 CPC was filed by the petitioner on 04.01.2017 wherein he has pleaded that he is coparcener in the suit property. Even though he was minor, he should have been impleaded as defendant through legal guardian in the suit. His second contention



was that he was major on the date of execution of sale deeds dated 18.05.1982 and 06.01.1981, since his date of birth is 18.01.1958. In this circumstance no title was created in favour of plaintiff as the share in HUF property could not have been transferred by his mother. In fact, his mother had no right to transfer in presence of his father as she was not co-parcener in the HUF property.

8. On these pleadings, the petitioner contended before the appellate court that it is necessary to bring on record the date of birth certificate of the petitioner issued by the Bihar School Examination Board, Patna in the year 1972 wherein his date of birth has been mentioned as 18.01.1958.

9. On perusal of the impugned order, it would be evident that on the petition filed by the petitioner under Order 41, Rule 27 CPC on 04.01.2017 a rejoinder was filed on 09.01.2017. After hearing the parties, the appellate court held that upon death of his father during pendency of the appeal the petitioner was substituted in his place as his heir and legal representative. The father of the petitioner had not filed any written statement before the court below in the title suit. He had not pleaded at any point of time that the petitioner was major on the date of execution of sale deed by his mother. On the basis of pleadings advanced on behalf of the parties, the appellate court has held that a substituted heir



has no right to put any new claim. It further held that in absence of any written statement on behalf of the original defendant no document can be taken in evidence at the appellate stage. On these grounds, the appellate court rejected the prayer of the petitioner vide impugned order dated 05.12.2018.

10. Order 41, Rule 27 of the CPC stipulates that a party to an appeal may adduce additional evidence, either oral or documentary in the appellate court in the following contingencies:-

- a) The court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
- (b) 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
- (c) 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.



11. Apart from the aforesaid contingencies, the legislature in his wisdom has stipulated that if there is any other substantial cause, the appellate court may allow the prayer to adduce additional evidence.

12. It is a settled position in law that additional evidence can be permitted if the court is satisfied that to enable it to pronounce a judgment additional evidence is a must.

13. It would be pertinent to note that in the suit in question there was no issue as to whether the petitioner was major or not on the date of execution of the sale deed by his mother. If the prayer of the petitioner would have been allowed by the appellate court, the appellate court would have been required to frame an additional issue. Framing of a fresh issue by the appellate court by allowing the prayer of the petitioner would not have been justified. Thus, apart from the reason assigned by the court below for dismissing the application of the petitioner under Order 41, Rule 27 of the CPC, I am also of the opinion that such a prayer of the petitioner could not have been allowed as the same would have amounted to framing of another issue at the appellate stage.

14. Moreover, the scope of power of this court under Article 227 of the Constitution is not in the nature of appellate jurisdiction. The ambit and scope of power with this court is



limited and restrictive in nature. It is exercised where there is want of jurisdiction, error of law or perverse findings of the court below. Such power is to be exercised to keep the subordinate courts within limits of their jurisdiction and authority. It is not to be exercised for correcting the decision of the subordinate court. This court would not substitute its opinion or interfere with the findings of fact by the court below, if there is no infirmity or perversity.

15. Since the impugned order does not suffer from any infirmity or perversity, no interference is warranted by this court. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

pradeep/sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.02.2019
Transmission Date	

