

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.399 of 2019**

1. Prabhunath Rai S/o Late Laldeo Rai R/o village-Amwa Moazzam, P.S. and District-Gopalganj
2. Jaikishore Rai @ Jayakishore Rai S/o Prabhunath Rai R/o village-Amwa Moazzam, P.S. and District-Gopalganj

... ..Interveners Respondents/ Petitioners

Versus

1. Surendra Thakur S/o Anwat Thakur R/V-Bangal Khad, P.O.-Sasamusa, P.S. Kuchaikot, Dist-Gopalganj
2. Ram Sagar Sharma S/o Deopujan Sharma R/V-Chakjoga, P.O.-Narkatia, P.S.-Uchakagaon, Dist-Gopalganj
... Defendant/Respondent/Respondent
3. Akhileshar Mishra S/o Late Ramnath Mishra R/V-Konhwa, P.O.-Parsama, P.S. and Dist-Gopalganj
4. Bimleshwar Mishra S/o Late Ramnath Mishra R/V-Konhwa, P.O.-Parsama, P.S. and Dist-Gopalganj

... ..Plaintiff/Appellant/formal Respondent/s

Appearance :

For the Petitioners : Mr.Jitendra Kumar Singh, Advocate
For the Respondents : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 12-07-2019

Heard learned counsel for the petitioners.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner against the impugned order dated 22.11.2018 passed in Title Appeal No.68 of 2011 whereby Fast Track Court-II, Gopalganj has rejected the application filed by the petitioner under Order 41, Rule 27 of the Civil Procedure Code (for short ‘CPC’) to take three sale deeds



dated 19.04.2005, 13.10.2004 and 08.04.2015 as additional evidence.

3. Learned counsel appearing for the petitioners submitted that the petitioners have been made intervenor respondent nos. 3 and 4 in Title Appeal No.68 of 2011. They had purchased the disputed land from the heirs of khatiyani raiyats. Respondent no. 3 had purchased 1 katha 4 dhur land from Kanhaiya Mishra in the year 2005. He had also 7 dhur land from the appellant Akhileshwar Mishra in the year 2004. Similarly, respondent no. 4 Jai Kishore Rai had purchased 1 Katha 11 dhur land from the appellant Akhileshwar Mishra in the year 2015 and they were added party under Order 1 Rule 2 of the CPC vide order dated 01.06.2017. He contended that an application under Order 41 Rule 27 of the CPC was filed by the petitioners before the appellate court for taking those sale deeds as documentary evidence in the appellate court but it grossly erred in rejecting the application filed by them. He contended that the sale deeds in question are public documents and taking them as additional evidence would not have in any way prejudiced the case of the plaintiff-appellant.

4. On perusal of the order impugned, I find that Title Suit No. 315 of 2004 was filed by the plaintiffs Akhileshwar



Mishra and Bimleshwar Mishra for declaration of title and possession over the land in dispute. In the said suit, judgement and decree was passed on 05.08.2011 and 19.08.2011 respectively. Being aggrieved by the judgment and the decree, the plaintiffs filed Title Appeal No. 68 of 2011 before the appellate court. The petitioners were impleaded as intervenor respondent nos. 3 and 4 vide order dated 01.06.2017 by the appellate court. The appellate court while dismissing the application filed by the petitioners under Order 41, Rule 27 of the CPC held that the sale deeds in question have got no relevance to the suit, which is for the declaration of title and possession. An execution of sale deed by a party during the pendency of litigation will have no bearing on the issue involved in the suit.

5. Moreover, Rule 27 of Order 41 of the CPC does not entitle a party to an appeal to produce additional evidence, whether oral or documentary, in the appellate court, unless the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or 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 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. Further, sub rule 2 of Rule 27 mandates that whenever additional evidence is allowed to be produced by an appellate court, the court should record its reasons for admitting additional evidence.

6. An application for taking additional evidence on record can be considered taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led before the trial court.

7. An additional evidence cannot be produced at appellate stage without fulfilling any of the conditions of Order 41, Rule 27 of the CPC.

8. Since it is not a case in which the court from whose decree the appeal is preferred has refused to admit evidence in course of trial which ought to have been admitted or the court requires the document to be produced, or the same is required to enable the court to pronounce judgment, or the same is necessary due to any other substantial cause, there appears no perversity in the order passed by the appellate court.



9. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.07.2019
Transmission Date	NA

