

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.406 of 2019

Sheikh Anvaraul Haque @ Anvarul Haque Son of Abdul Gafoor Resident of
Village-Ratan Sarai Balwa Tola, P.S.-Barawli, District-Gopalganj.

... .. Plaintiff-Appellant-Petitioner

Versus

1. Sheikh Abdul Bari Son of Late Sk. Mahmood Alam Resident of Village-Ratan Sarai-Balwa Tola, P.S.-Barauli, District-Gopalganj.
2. Sk. Abdullah Son of Late Sk. Mahmood Alam Resident of Village-Ratan Sarai-Balwa Tola, P.S.-Barauli, District-Gopalganj.
3. Sk. Anwar Son of Late Sk. Mahmood Alam Resident of Village-Ratan Sarai-Balwa Tola, P.S.-Barauli, District-Gopalganj.
4. Sk. Sahnawaz Son of Late Sk. Mahmood Alam Resident of Village-Ratan Sarai-Balwa Tola, P.S.-Barauli, District-Gopalganj.
5. Bibi Kausera W/o Sheikh Late Nirhu @ Nasrullah Resident of Village-Ratan Sarai-Balwa Tola, P.S.-Barauli, District-Gopalganj.
6. Noor Basher minor son of Late Nirhu who is under the guardianship of his mother, Resident of Village-Ratan Sarai-Balwa Tola, P.S.-Barauli, District-Gopalganj.
7. Bibi Shaikul Khatoon D/o Late Mahmood Alam Resident of Village-Ratan Sarai-Balwa Tola, P.S.-Barauli, District-Gopalganj.
8. Bibi Safaita Khatoon W/o Nazir Hussain and D/o Late Mahmood Alam Resident of Village-Ratan Sarai-Balwa Tola, P.S.-Barauli, District-Gopalganj.
9. Bibi Mairun Khatoon W/o Sk. Sadruddin and D/o Late Sk. Mahmood Alam Resident of Village-Ratan Sarai-Balwa Tola, P.S.-Barauli, District-Gopalganj.
10. Bibi Maqusoodan Khatoon W/o Sk. Abdullah and D/o Late Sk. Rasool Resident of Village-Ratan Sarai-Balwa Tola, P.S.-Barauli, District-Gopalganj.
11. Bibi Saleman Khaton W/o Ishahaque, D/o Sk. Rasool Resident of Village-Bakhraur, P.S. and P.O.-Baruli, District-Gopalganj.
12. Sk. Ainul Haque Son of Late Sk. Abdul Gafoor Resident of Village-Ratan Sarai-Balwa Tola, P.O. and P.S.-Barauli, District-Gopalganj.

... ..Defendants-respondents-respondents



Appearance :

For the Petitioners : Mr.Yogendra Prasad Sinha, Advocate
For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 12-07-2019

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 26.02.2019 passed by the learned Additional District Judge-III, Gopalganj whereby he has rejected his application dated 25.07.2018 filed under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure (for short 'CPC') in Title Appeal No. 16 of 2011.

3. Learned counsel appearing for the petitioner submitted that the lower appellate court has not at all considered the provision as contained in Order 41 Rule 27 of the CPC. He has not recorded whether the document is relevant or not and only on technical ground that the document was not produced earlier and the same has been filed after 9 years before the appellate court, he has rejected the same. He submitted that the order impugned is not sustainable, as the appellate court has dismissed the application on the superficial finding.



4. Having heard learned counsel for the petitioner and perused the materials on record including the order impugned, I find that the petitioner had filed Title Suit No. 277 of 2000 in the court of Munsif Gopalganj for declaration of title and declaration of possession in respect of land in question. Being aggrieved by the judgment and decree passed by the court of Munsif, he filed Title Appeal No. 16 of 2011 before the court of District Judge. After 8 years of filing the appeal, he filed an appeal under Order 41 Rule 27 of the CPC for taking sale deed dated 03.07.2009, as an additional evidence in the appeal, which was rejected by the appellate court vide impugned order dated 26.02.2019.

5. The appellate court, while rejecting the application of the petitioner held that there is no averment in the application that notwithstanding the exercise of due diligence, the sale deed in question was not within the knowledge of the petitioner or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.

6. On a reading of Order 41 Rule 27 of the CPC, it would be evident that for entertaining an application for production of evidence in an appeal, one or more of the following three conditions have to be fulfilled:-



- (i) the court from whose decree the appeal is preferred has refused to admit evidence, which ought to have been admitted, or
- (ii) 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
- (iii) 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.

7. It is well settled law that the appellate court should not ordinarily allow new evidence to be adduced in order to enable a party to raise new point in appeal.

8. The provisions prescribed under Order 41, Rule 27 of the CPC does not entitle the appellate court to admit fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It is not for the appellate court to supplement evidence.



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

10. In the instant case, none of the three conditions provided under Order 41, Rule 27 was fulfilled, as it is not the case of the petitioner that the court from whose decree the appeal has been preferred had refused to admit the sale deed in question, or notwithstanding the exercise of due diligence, such sale deed was not within his knowledge or the appellate court requires the document to be produced to enable it to pronounce judgment.

11. In view of the discussion made above, no case for interference with the order passed by the lower appellate court is made out.

12. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.07.2019
Transmission Date	NA

