

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12908 of 2015

1. Most. Bano, Wife of Late Nayeem Mistri
 2. Md. Meharan, Son of Late Nayeem Mistri
 3. Md. Ibran Rashim, Son of Late Nayeem Mistri
 4. Md. Imran, Son of Late Nayeem Mistri
 5. Md. Farhan, Son of Late Nayeem Mistri
 6. Md. Rehan, Son of Late Nayeem Mistri
 7. Tausif Alam, Son of Late Nayeem Mistri
 8. Nikhat Parveen, Daughter of Late Nayeem Mistri
 9. Nuzhat Parveen Daughter of Late Nayeem Mistri
- All residents of Agarwal Market Gurudwara Road, Bhatta, P.S. K. Hat,
District Purnea.

... .. Petitioner/s

Versus

Ramesh Chandra Agrawal, Son of late Ram Narayan Chand at R.N. Shaw
Chowk, P.S. K.Hat, District -Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J. S. Arora, Sr. Advocate
		Mr. Manoj Kumar, Advocate
For the Respondent/s	:	Mr. K. N. Choubey, Sr. Advocate
		Mr. Sanjay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

8 06-05-2019 Heard Mr. J.S. Arora, learned senior counsel
appearing on behalf of the petitioners and Mr. K. N. Choubey,
learned senior counsel appearing on behalf of the respondent.

2. The petitioners are aggrieved by the order dated
07.08.2015 passed by the learned 3rd Additional District Judge,
Purnia in Eviction Appeal No. 05 of 1994.

3. Mr. J.S. Arora, learned counsel for the petitioners
has drawn the attention to the order of the Court below dated



07.08.2015 whereby the application of the appellants-petitioners under Order XLI Rule 27 of the C.P.C. was rejected by the learned 3rd Additional District Judge, Purnia. Mr. Arora, learned counsel for the petitioners submits that the court below was required to pass order within the parameters of under Order XLI Rule 27 of the C.P.C. For ready reference Order XLI Rule 27 of the C.P.C. is quoted herein below:

“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.”



4. The scheme and scope under Order XLI Rule 27 of the C.P.C. is very specific. He submits that while deciding the application under Order XLI Rule 27 of the C.P.C., the court below has not considered the application in its proper perspective and instead of deciding the application for additional evidence at the appellate stage, the court below has recorded the finding that the document have been fabricated for the purpose of this appeal only and therefore the same is not fit to be considered at this stage. Learned counsel for the petitioners submits that the court below while taking decision was influenced by this submission of the respondent and ultimately rejected the application for additional evidence as not maintainable on the premise “that it appears to me that the aforesaid document have been fabricated for the purpose of this appeal only and therefore the same is not fit to be considered at this stage.”

5. Mr. Arora submits that the aforesaid finding has influenced the decision making process and, therefore, the order dated 07.08.2015 passed in Eviction Appeal No. 05 of 1994 is unsustainable.

6. Per contra, Mr. K. N. Choubey, learned senior counsel appearing on behalf of the respondent submits that there



is no infirmity in the order passed by the court below dated 07.08.2015, as the additional evidence is not admissible as a matter of course. It has to be taken within the parameters under Order XLI Rule 27 of the C.P.C. Referring to the judgment of the Apex Court in the case of Union of India Vs. Ibrahim Uddin & Anr., reported in **2013(1) PLJR 48 SC** para 6 to 17 and 38 to 41. Mr. Choubey submitted that the scope of additional evidence at the appellate stage is confined to the parameters under Order XLI Rule 27 of the C.P.C. and applying the aforesaid principle one cannot find fault with the order dated 07.08.2015 in order to pertain the same.

7. Mr. Choubey next placed reliance on the judgment of this Court reported in **2017(2) PLJR 479** para 8 and 21 to 32 and submits that the proposition is well settled and there is no rub on the principle followed for the purpose of accepting additional evidence at the appellate stage.

8. In the instant case, the court finds that the court below was influenced by the submission of the respondent that the document is forged and fabricated and therefore it should not be admitted under Order XLI Rule 27 of the C.P.C. and in fact the court has recorded a finding that from the facts of the case discussed above it appears to me that the aforesaid



document have been fabricated for the purpose of this appeal only and therefore the same is not fit to be considered at this stage.

9. The aforesaid consideration by the court below at the stage of Order XLI Rule 27 of the C.P.C. is no consideration of the application within the parameters of Order XLI Rule 27 of the C.P.C. In a judicial, if decision is influenced by such finding then the order is unsustainable.

10. In view of the above, the Court is of the view that the principle discussed by the Apex Court on which reliance has been placed by the learned counsel for the respondent is well founded, but in the present case the decision making process is vitiated on account of the finding that the document, which was filed for taking as additional evidence is forged and fabricated cannot sustain in the manner it was casually held as forged and fabricated on mere asking of the parties without enquiry and evidence. The finding as to forged and fabricated cannot be summarily recorded on mere filing of petition without leading evidence and as such the order dated 07.08.2015 is unsustainable. The rejection of the application under Order XLI Rule 27 of the C.P.C. is unsustainable. Accordingly, the order dated 07.08.2015 passed in Eviction Appeal No. 05 of 1994 is



set aside and the matter is remitted back to the learned 3rd Additional District Judge, Purnia to decide the application filed by the petitioners for additional evidence in accordance with law and while taking decision the 3rd Additional District Judge, Purnia shall take into consideration the judgment cited at bar on behalf of the respondent including 2013(1) PLJR 48 (SC) para 6 to 17 and 38, 2017(2) PLJR 479, AIR 2001 SC 131 and any other judgment on which the respondent or the petitioners may place reliance at the time of hearing afresh on the application under Order XLI Rule 27 of the C.P.C.

11. Since this matter is old one, the court below is directed to take decision on the application filed under Order XLI Rule 27 of the C.P.C. at the earliest preferably within a period of two months from the date of receipt/production of a copy of this order and thereafter finally decide the appeal within a further period of six months.

12. This writ application is accordingly allowed to the extent mentioned herein above.

(Anil Kumar Upadhyay, J)

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