

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6216 of 2011

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SMT. DAYAMANTI DEVI @ DAIMANTI DEVI, Wife of Sri Ram Sagar Prasad Sinha, a resident of Village Bhagwanpur, P.O. Murgaon, P.S. Islampur, District- Nalanda and now resident of Aam Bagichha, Mahadev Puri, Gardanibagh, P.S. Gardanibagh, P.O. G.P.O., Patna -1, in the town and District of Patna.

... .. Petitioner/s

Versus

1. SMT.URMILA DEVI Wife of Sri Ram Ekbal Singh Resident of Village and P.O. Kalyanpur, P.S. Punpun, and District of Patna and Presently residing at Quarter No. A/9, Shivpuri, Beur Road, P.O. Anisabad, Patna-2 and District- Patna.
- 2.1. Ranjana Kumari, Daughter of late Ram Ekbal Singh, Wife of Rajesh Kumar Singh, Resident of Village -. Kalyanpur, P.S. Punpun, Town and District Patna and Presently residing at Jamunaji Ka Math, Nai Sadak, Chowk, Patna City, Town and District- Patna.
- 2.2. Renu Kumari, daughter of late Ram Ekbal Singh, Wife of Rakesh Sinha, Resident of Village -. Kalyanpur, P.S. Punpun, Town and District Patna and Presently residing at Village- Dariyapur, P.O. Mittanchak, Via- Punpun, P.S. Parsa Bazar, Town and District at Patna.
- 2.3. Rekha Kumari, Daughter of late Ram Ekbal Singh, Wife of Kaushal Kishore , Resident of Village -. Kalyanpur, P.S. Punpun, Town and District Patna and Presently residing at House No. A/9, Shivpuri, Beur Road, P.O. Anishabad, Patna- 2, Town and District at Patna.
- 2.4. Sonam Sinha, Daughter of late Ram Ekbal Singh, Resident of Village -. Kalyanpur, P.S. Punpun, Town and District Patna and Presently residing at House No. A/9, Shivpuri, Beur Road, P.O. Anishabad, Patna- 2, Town and District at Patna.
- 2.5. Gaurav Sinha, Son of late Ram Ekbal Singh, Resident of Village -. Kalyanpur, P.S. Punpun, Town and District Patna and Presently residing at House No. A/9, Shivpuri, Beur Road, P.O. Anishabad, Patna- 2, Town and District at Patna.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. J.S.Arora, Sr. Adv. Mr. Manoj Kumar, Adv. Mr. Gaurav Pratap, Adv.
For the Respondent No. 1	:	Mr.Sanjeet Kumar, Adv. Mr. Digvijay Nayan Singh, Adv.
For the Respondent No. 2	:	Mr. Surendra Kishore Thakur, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 14-08-2020



The present writ petition has been filed for quashing the order dated 01.02.2011 passed by the Ld. Additional District Judge 2nd Patna in Title Appeal No. 62 of 2009 whereby and whereunder the petition filed by the petitioner for adducing additional evidence has been rejected.

2. The brief facts of the case are that the respondents had sold a piece of land to the defendant-appellant-petitioner herein bearing Plot No. 1785, Tauzi No. 390 and Khata No. 140, admeasuring 1 katha 4 dhur, situated at Dhakanpura, P.S.-Phulwari, at present P.S.-Gardanibagh, District-Patna by a registered deed of sale dated 07.10.1996. The deed of sale was executed by the Respondents and registered at the registration office at Kolkata, whereafter, the name of the defendant-appellant-petitioner herein was mutated in the records and the petitioner herein had then constructed a house on the said land where she has started living with her family members. However, subsequently, it appears that the intention of the respondents became dishonest



and a Title Suit bearing Title Suit No. 355 of 1998 was filed in the court of Subordinate Judge, 1st Patna. In the plaint of the said Title Suit, it has been alleged that though the sale consideration for the said land was agreed at a sum of Rs. 50,000/- and out of the said amount, a sum of Rs. 5,000/- was paid at the time of execution and registration of the deed of sale at Kolkata and rest amount of Rs. 45,000/- was to be paid at the time of Takazul Badlain (exchange of registration receipt of the deed of sale), however, the balance consideration money of Rs. 45,000/- was not paid by the petitioner herein. In the said plaint, it was also alleged that since the balance amount of Rs. 45,000/- was not paid to the respondents, the respondents, on the basis of original registration receipt, had withdrawn the original sale deed from the registration office, which is in the custody of the Respondent No. 1 herein and the aforesaid suit was filed for cancellation of the said sale deed wherein an alternative relief was sought for decreeing the suit for a sum of Rs. 45,000/-, being



the balance consideration money, with interest thereon. The defendant-appellant-petitioner herein had appeared in the said suit and filed a written statement taking various pleas including the ground of non-maintainability of the suit, there being no cause of action for filing the suit, suit being barred by the principles of estoppel, waiver, acquiescence, suit being barred by limitation and also hit by the provisions contained in the Specific Relief Act, apart from the court fee paid being insufficient since the suit was for declaration of title as well as for setting aside the sale deed and recovery of possession. In the written statement, as far as the facts of the case are concerned, it was stated that the sale deed was executed in favour of the appellant-petitioner herein only after payment of full consideration money, whereafter title was conveyed to the appellant through the said sale deed, possession was handed over to the petitioner herein and the property was accordingly delivered to her. It has also been stated in the written statement that the plaintiff-respondent



herein had in all 2 katha 4 dhur of land, out of which one katha 4 dhur of land was sold to the petitioner herein by the aforesaid registered sale deed dated 07.10.1996 and rest 1 katha of land was sold by the respondent to one Smt. Sharda Devi wife of Sri Surendra Prasad. It has also been stated that since the entire consideration money had already been paid by the petitioner, a sale deed with regard to the suit property was registered at Kolkata and the fact is that no part of the consideration money remains to be paid, however, since the scribe at Kolkata was known to the respondents, the respondents had assured that the sale deed would be obtained subsequently from the registration office and handed over to the petitioner.

3. It is the further case of the petitioner that an agreement for sale with regard to another piece of land was executed in between the husband of the petitioner herein and the original Respondent No. 2, admeasuring 1 katha 15 dhur, situated at Plot No. 482, Mohalla-Shiv Puri, Beur Road,



Gardanibagh, District-Patna on which five shops were situated and the husband of the petitioner herein had paid a total sum of Rs. 1,45,000/- to the husband of the Respondent No. 1 vide bank draft dated 21.08.1996, however, the sale deed was neither executed nor registered and instead, the original Respondent No. 2 herein started demanding more money than the agreed price resulting in filing of a Title Suit bearing T.S. No. 273 of 1999 for specific performance of the contract, against the respondents herein, before the Ld. court of Sub-Judge First Patna. In this connection, it is submitted that the plot in question is only 1 katha, as such, the husband of the petitioner herein as also the petitioner herein had been pressuring the respondents to refund the proportionate price of 4 dhur, which they were evading and in order to avoid refund of the amount, the respondents dishonestly began blackmailing the husband of the petitioner and the petitioner with a view to misappropriate the aforesaid amount.



4. It is the further case of the petitioner herein that the plaintiffs-respondents herein had subsequently made amendment in the plaint and had thereupon, cooked up a new case inasmuch as they started claiming that the sale consideration was fixed in-between the parties to the tune of Rs. 1,80,000/- and not Rs. 50,000/-. It was also stated that the petitioner had paid only a sum of Rs. 1,46,500/- out of the said amount of Rs. 1,80,000/-, however, she had not paid the balance amount of Rs. 33,500/-. Accordingly, the plaintiffs-respondents had withdrawn the relief of declaration of title and cancellation of the deed of sale dated 07.10.1996. The new reliefs added in place of the old reliefs, to the aforesaid Title Suit No. 355 of 1998 are as follows:-

“(i) That it be declared that the plaintiff are entitled to recover Rs. 33,500/- with interest thereon from the defendant.

(ia) That after adjudication of the plaintiff's title and want of title of defendant it be directed that the plaintiff



have got title and possession on the suit land described in the Schedule No. 1 at the foot of the plaint and the defendant has not paid the entire consideration money as per terms of agreement for sale and the defendant has committed breach of trust and further according to provision of the Indian Registration Act amended by the State of Bihar they cannot be registration of the sale deed in respect of the land of Bihar in Calcutta registry office and as such sale deed dated 07.10.1996 executed by plaintiff no. 1 in favour of the defendant or cancelled.

(ii) That Rs. 33,500/- (Rs. Thirty three thousand five hundred) only balance amount of consideration money with interest pendente lite and future interest at the rate of Rs. 1% (one percent) be passed in favour of the plaintiffs and against the defendant."

5. The aforesaid suit bearing Title Suit No. 355 of



1998 was heard at length, whereafter the learned court of Subordinate Judge 8th Patna decreed the suit by a judgment and decree dated 07.07.2009 in favour of the plaintiffs and against the defendant-petitioner herein. The learned court below declared that the right, title and possession over the suit property, more specifically described at the foot of the plaint in Schedule 1 of the plaint remained with the plaintiffs and it never passed to the defendant as the defendant did not pay the entire consideration money as per the terms of agreement for sale. Accordingly, the sale deed dated 07.10.1996 executed by the plaintiff no. 1 i.e. the respondent no. 1 herein in favour of the defendant i.e. the petitioner herein has been cancelled. It has been further held that the plaintiffs-respondents herein are not entitled for a decree of Rs. 33,500/- with interest from the defendant-petitioner herein.

6. The petitioner herein had then challenged the aforesaid judgment and decree dated 07.07.2009 before the learned court of District Judge, Patna by



filing an appeal bearing Title Appeal No. 62 of 2009. In the said appeal, the petitioner had filed a petition on 17.04.2010 for bringing additional evidence on record and the documents sought to be brought on record are as follows:-

“(i) the original sale deed dated 07.10.1996 revalidated at Patna on 25.04.2009.

(ii) Certified copy of Assessment of Patna Municipal Corporation of the year 1995-96.

(iii) Certified copy of the order of mutation passed in Mutation Case No. 45 of 2003 of 2010-2011 along with letter of correction and jamabandi.”

7. The Respondents had filed a rejoinder to the aforesaid petition dated 17.04.2010 on 28.04.2010, whereafter the parties were heard on the aforesaid petition, filed for bringing additional evidence on record and the learned court below by the impugned order dated 01.02.2011 has been pleased to reject the said petition of the petitioner



herein.

8. The learned Senior Counsel appearing for the petitioner has submitted that the learned court below has erred by passing the aforesaid order dated 01.02.2011, rejecting the prayer of the petitioner to bring on record additional evidence inasmuch as the documents, sought to be brought on record, are mostly documents of public nature. It is further submitted that as a matter of fact despite due diligence, the documents in question could not be brought on the record of the case, when the decree under appeal was passed and the said documents are necessary and essential for a just decision of the case.

9. The learned Senior Counsel for the petitioner has relied on various judgments rendered by the Hon'ble Apex Court, which are being reproduced herein below along with their relevant paragraphs:-

(i). (2018) 10 SCC 484 (Uttaradi Mutt v. Raghavendra Swamy Mutt), paragraphs no. 9 and 11 whereof are reproduced herein below:-

"9. This objection need not detain us as



we are of the considered opinion that the first appellate court would have been within its jurisdiction to permit the party to the proceedings to produce additional evidence before it for full, complete and effectual adjudication of the proceedings. The purport of Order 41 Rule 27 CPC has been considered by this Court in Union of India [Union of India v. Ibrahim Uddin, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362]. The Court adverted to the exposition made in earlier decisions of the Court from paras 36 to 46 and summed up the proposition in paras 47 and 48 as under:

“47. Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed.

48. To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the



prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially 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 in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as to on what basis such an application has been allowed. However, the application should not be moved at a belated stage.”

11. In paras 49 to 52 of the same reported decision of Ibrahim Uddin [Union of India v. Ibrahim Uddin, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362] , the Court dealt with the question of stage of consideration of applications under Order 41 Rule 27 CPC, in reference to earlier decisions of



this Court. Be that as it may, on analysing the reasons recorded by the first appellate court for rejecting the three applications filed by the respondent-defendant under Order 41 Rule 27 CPC and juxtaposing the same with the reasons recorded [Union of India v. Ibrahim Uddin, 2007 SCC OnLine All 242 : (2007) 67 ALR 750] by the High Court for allowing those applications, in our opinion, the conclusion reached by the High Court on this count is impregnable.”

(ii). (2008) 8 SCC 511 (North Eastern Railway Admn. v. Bhagwan Das), paragraphs no. 13, 14, 15 and 16 whereof are reproduced herein below:-

“13. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 CPC, which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 CPC. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said



Rule are found to exist. The circumstances under which additional evidence can be adduced are:

(i) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted [clause (a) of sub-rule (1)], or

(ii) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within the knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed [clause (aa), inserted by Act 104 of 1976], 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 [clause (b) of sub-rule (1)].

14. *It is plain that under clause (b) of sub-rule (1) of Rule 27 Order 41 CPC, with which we are concerned in the instant case, evidence may be admitted by an appellate authority if it “requires” to*



enable it to pronounce judgment “or for any other substantial cause”. The scope of the Rule, in particular of clause (b) was examined way back in 1931 by the Privy Council in Parsotim Thakur v. Lal Mohar Thakur [AIR 1931 PC 143]. While observing that the provisions of Section 107 as elucidated by Order 41 Rule 27 are clearly not intended to allow litigant, who has been unsuccessful in the lower court, to patch up the weak parts of his case and fill up omissions in the court of appeal, it was observed as follows: (AIR p. 148)

“... Under clause (1)(b) it is only where the appellate court ‘requires’ it (i.e. finds it needful) that additional evidence can be admitted. It may be required to enable the court to pronounce judgment or for any other substantial cause, but in either case it must be the court that requires it. This is the plain grammatical reading of the sub-clause. The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but

‘when on examining the evidence as it stands some inherent lacuna or defect



becomes apparent'."

15. Again in *K. Venkataramiah v. A. Seetharama Reddy* [AIR 1963 SC 1526 : (1964) 2 SCR 35] a Constitution Bench of this Court while reiterating the afore noted observations in *Parsotim* case [AIR 1931 PC 143] pointed out that the appellate court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment" but also for "any other substantial cause". There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence "to enable it to pronounce judgment", it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Thus, the question whether looking into the documents, sought to be filed as additional evidence, would be necessary to pronounce judgment in a more satisfactory manner, has to be considered by the Court at the time of hearing of the appeal on merits.



16. *Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. (Also see Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar [(1990) 1 SCC 166] .)”*

(iii). (2015) 17 SCC 713 (A. Andisamy Chettiar v. A. Subburaj Chettiar), paragraphs no. 11, 12, 13, 15 and 16 whereof are reproduced herein



below:-

“11. Under the scheme of the Code of Civil Procedure, 1908 (for short “the Code”) whether oral or documentary, it is the trial court before whom parties are required to adduce their evidence. But in three exceptional circumstances additional evidence can be adduced before the appellate court, as provided under Section 107(1)(d) read with Rule 27 of Order 41 of the Code. Rule 27 of Order 41 reads as under:

“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) Wherever additional evidence is allowed to be produced by an appellate court, the court shall record the reason for its admission.”

(emphasis supplied)

12. *From the opening words of sub-rule (1) of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against the spirit of the Code to allow a party to adduce additional evidence without fulfilment of either of the three conditions mentioned in Rule 27. In the case at hand, no application was moved*



before the trial court seeking scientific examination of the document (Ext. A-4), nor can it be said that the plaintiff with due diligence could not have moved such an application to get proved the documents relied upon by him. Now it is to be seen whether the third condition i.e. one contained in clause (b) of sub-rule (1) of Rule 27 is fulfilled or not.

13. *In K.R. Mohan Reddy v. Net Work Inc. [K.R. Mohan Reddy v. Net Work Inc., (2007) 14 SCC 257] this Court has held as under:*

“19. The appellate court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial court, but it will be different if the court itself requires the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the court. But mere difficulty is not sufficient to issue such direction.”

15. *In N. Kamalam v. Ayyasamy [N. Kamalam v. Ayyasamy, (2001) 7 SCC 503] this Court, interpreting Rule 27 of Order*



41 of the Code, has observed in para 19 as under:

“19. ... the provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the court of appeal— it does not authorise any lacunae or gaps in the evidence to be filled up. The authority and jurisdiction as conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way.”

16. In *Union of India v. Ibrahim Uddin* [*Union of India v. Ibrahim Uddin*, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362] this Court has held as under: (SCC p. 171, para 49)

“49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the



applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.”

(emphasis in original)

(iv). (2010) 8 SCC 423 (Shalimar Chemical Works Ltd. v. Surendra Oil & Dal Mills), paragraphs no. 11, 12, 16 and 17 whereof are reproduced herein below:-

“11. The learned counsel contended that since the procedure followed by the trial court was contrary to the procedure prescribed by Order 13 Rule 4, in appeal against the trial court judgment, the learned Single Judge of the High Court was fully justified in accepting the originals of the documents concerned in evidence and the Division Bench was not right in holding that the originals of the



documents concerned were wrongly taken in evidence. Mr Rao submitted that while enumerating the circumstances in which production of additional evidence may be allowed, the Division Bench overlooked the words “or for any other substantial reason” at the end of clause (b) of Rule 27(1). He submitted that those words greatly enlarged the scope of the provision and were especially relevant for a case like the one in hand where the plaintiff had suffered great prejudice due to the incorrect procedure followed by the trial court. In support of his submission he relied upon the decision of this Court in K. Venkataramiah v. A. Seetharama Reddy [AIR 1963 SC 1526 : (1964) 2 SCR 35] : (AIR p. 1530, para 16)

“16. ... Apart from this, it is well to remember that the appellate court has the power to allow additional evidence not only if it requires such evidence ‘to enable it to pronounce judgment’ but also for ‘any other substantial cause’. There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence



‘to enable it to pronounce judgment’ it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence ‘for any other substantial cause’ under Rule 27(1)(b) of the Code.”

12. *Mr Rao further submitted that the very narrow view of Order 41 Rule 27 taken by the Division Bench has only led to frustrate the ends of justice. In order to lend strength to his submission, Mr Rao referred to the illuminating and perennially relevant passage from the judgment of Vivian Bose, J. in Sangram Singh v. Election Tribunal [AIR 1955 SC 425 : (1955) 2 SCR 1] : (AIR p. 429, para 16)*

“16. Now a code of procedure must be regarded as such. It is ‘procedure’, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for



reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it."

(emphasis supplied)

16. *The learned Single Judge rightly allowed the appellant's plea for production of the original certificates of registration of trade mark as additional evidence because that was simply in the interest of justice and there was sufficient statutory basis for that under clause (b) of Order 41 Rule 27. But then the Single Judge seriously erred in proceeding simultaneously to allow the appeal and not giving the respondent-defendants an opportunity to lead evidence in rebuttal of the documents taken in as additional evidence.*

17. *The Division Bench was again wrong in taking the view that in the facts of the case, the production of additional evidence was not permissible under Order 41 Rule 27. As shown above, the additional documents produced by the appellant were liable*



to be taken on record as provided under Order 41 Rule 27(b) in the interest of justice. But it was certainly right in holding that the way the learned Single Judge disposed of the appeal caused serious prejudice to the respondent-defendants. In the facts and circumstances of the case, therefore, the proper course for the Division Bench was to set aside the order of the learned Single Judge without disturbing it insofar as it took the originals of the certificates of registration produced by the appellant on record and to remand the matter to give opportunity to the respondent-defendants to produce evidence in rebuttal if they so desired. We, accordingly, proceed to do so."

10. Thus, the learned Senior Counsel for the petitioner has submitted that the learned court below has erred by not permitting the petitioner to adduce additional evidence, as aforesaid, especially in view of the law laid down by the Hon'ble Apex Court in a catena of decisions, as referred to herein above.



11. Per contra, the learned counsel for the respondents has submitted that the submissions made on behalf of the petitioner herein is not justified in the facts and circumstances of the case inasmuch as the exercise of power by the learned court below, while taking a decision regarding taking on record additional evidence, is discretionary and if the learned court deems it fit and proper that such documents, sought to be introduced by way of additional evidence, are required to be taken on record for just and fair adjudication, the Court can permit the same to be taken on record, however, as far as the documents in question, sought to be adduced as additional evidence in the present case, are concerned, the sale deed dated 07.10.1996, revalidated on 25.04.2009, was well within the knowledge of the petitioner from the inception, hence, there is no justifiable explanation with regard to the delay in producing the same before the passing of the judgment in Title Suit No. 355 of 1998 on 07.07.2009. As regards the certified copy of the



assessment of the Patna Municipal Corporation of the year 1995-96 is concerned, it is stated that the said document was all throughout within the knowledge of the petitioner, hence, the learned court below had rightly rejected the petition of the petitioner herein for adducing additional evidence. It is further submitted that a plain reading of Order 41 Rule 27 of the Code of Civil Procedure would bear it out that if a document was not within the knowledge or could not, after exercise of due diligence, be produced at the time when the decree under appeal was passed, in such circumstances, the appellate court has the power to accept such documents as additional evidence but while accepting such documents as additional evidence, the concerned party has to prove that such evidence was either not within his knowledge or could not be produced by him, even upon exercise of due diligence, at the time when the decree appealed against was passed, however, it is submitted that this is not the case herein, hence, the learned court below has rightly rejected the



application of the petitioner for adducing additional evidence.

12. I have heard the learned counsel for the parties and gone through the materials on record as also perused the law laid down by the Hon'ble Apex Court. The only question to be decided is as to whether the learned court below, by the impugned order dated 01.02.2011 passed in Title Appeal No. 62 of 2009, has rightly rejected the petition filed by the petitioner herein for adducing additional evidence. In this regard, first of all, it would be pertinent to mention here about the lis involved in the present case. The suit in question i.e. Title Suit No. 355 of 1998 was filed by the plaintiffs-respondents herein for declaration that the plaintiffs are entitled to recover a sum of Rs. 33,500/- with interest from the defendant-petitioner herein and also for declaration that the plaintiffs have got right, title and possession over the said property, more specifically described at the foot of the plaint i.e. Schedule 1 of the plaint, since the title of the suit property remained with



the plaintiffs inasmuch as the defendant- petitioner herein did not pay the entire consideration money as per the terms of the agreement for sale. On the basis of the pleadings of both the parties, the learned court below had framed the following issues in the aforesaid Title Suit No. 355 of 1998 for just decision of the suit:-

" I. Is the suit as framed maintainable or not ?

II. Have the plaintiffs got valid cause of action for the suit or not ?

III. Is the suit barred by estoppel, waiver and acquiescence or not ?

IV. Is the suit barred by limitation or not ?

V. Is the suit hit by Specific Relief Act ?

VI. Is the court fee paid sufficient or not ?

VII. Have the plaintiffs got title and possession over the suit property and are the plaintiffs entitled to the relief no. 1-A as claimed in the plaint or not

VIII. Are the plaintiffs entitled to get a decree for recovery of balance consideration money of rupees Thirty-three thousand five hundred or not ?

IX. To what other relief or reliefs, the



plaintiffs are entitled for ?"

13. It is thus apparent that the only issue to be decided in the aforesaid Title Suit No. 355 of 1998 and the issue which has in fact been decided by the judgment and decree dated 07.07.2009 passed by the learned Sub-Judge 1st Patna is as to whether the defendant-petitioner herein has paid the full consideration amount to the plaintiffs-respondents herein or not. The learned court below has come to the conclusion that the defendant-petitioner herein has not paid the full consideration amount, hence, in view of the settled law to the effect that sale is not complete until the full consideration money is paid and that registration alone is insufficient to pass title without such payment, the learned court below has held that the title of the suit land never passed on to the defendant and the title and possession over the suit property remained with the plaintiffs, as such, the learned court below has cancelled the sale deed dated 07.10.1996, executed by the plaintiff no. 1 in favour of the defendant-petitioner herein.



14. Therefore, it is apparent from the discussions made herein above as also from the prayer made in the aforesaid suit bearing Title Suit No. 355 of 1998, the issues framed by the learned court below and the judgment passed by the learned court below dated 07.07.2009 that the only issue to be determined was as to whether the full amount of sale consideration has been paid by the defendant-petitioner herein to the plaintiffs-respondents herein. Now, applying the law laid down by the Hon'ble Apex Court in the aforesaid cases, referred to hereinabove and considering the scope of Order 41 Rule 27 of the Code of Civil Procedure, this Court finds that the following conditions are required to be satisfied for permitting additional evidence to be adduced:-

“(i) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been;

(ii) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within the knowledge or could not, after the exercise of



due diligence, be produced by him at the time when the decree appealed against was passed;

(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;

(iv) No injustice is caused to the other side;

(v) Such additional evidence, sought to be produced, are necessary for the purpose of determining the real questions in controversy between the parties;

(vi) Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be placed on record;

(vii) the relevance of the document in respect of the issues involved in the case;

(viii) the circumstances under which such evidence could not be led in the court below,

(ix) whether the applicant had prosecuted his case before the court below diligently;



(x) whether such evidence is required to pronounce the judgment by the appellate court.”

15. Now coming back to the present case, it would be seen that the petitioner herein has nowhere stated in the amendment petition filed by her under Order 41 Rule 27 in the pending Title Appeal No. 62 of 2009 that such additional evidence, sought to be produced, was not within her knowledge, as such, it is apparent that despite the petitioner having knowledge about the documents, sought to be produced as additional evidence, she deliberately did not produce the same, probably since she did not find the same to be of any relevance qua the issues involved in the present case. The only explanation given by the petitioner herein in the aforesaid amendment petition, filed in Title Appeal No. 62 of 2009, is that she was unaware regarding the necessity and requirement of producing such documents and their legal implications, however, no plausible explanation has been furnished either for not



producing the said documents before the learned court below in the suit bearing Title Suit No. 355 of 1998 or with regard to the relevance of such documents in respect of the issues involved in the case or with regard to the necessity of such documents for the purpose of determining the real questions in controversy between the parties. In such view of the matter, upon considering the facts and circumstances of the present case, going through the materials on record and having perused the law enunciated by the Hon'ble Apex Court in a catena of decisions, referred to hereinabove, this Court finds that the documents, sought to be produced by the petitioner herein by way of additional evidence, are neither relevant in respect of the issues involved in the present case nor the same are necessary for pronouncement of judgment by the appellate court nor the same have a direct and important bearing on the lis to the suit nor the said documents are relevant for deciding the main dispute i.e. as to whether the sale consideration has been paid in full or not,



apart from the fact that the petitioner has not disputed the fact that the said documents were within her knowledge. Hence, this Court finds that the learned court below has rightly rejected the petition filed by the petitioner for adducing additional evidence by the impugned order dated 01.02.2011 passed in Title Appeal No. 62 of 2009, thus, the present writ petition stands dismissed, being bereft of any merit.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	08.07.2019
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Transmission Date	NA

