

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.437 of 2021**

1. Ganga Ram Yadav Son of Ram Balak Yadav, Resident of Village - Mangalgarh, P.S. - Hasanpur, District - Samastipur.
2. Sheo Shankar Yadav @ Shankar Yadav @ Shankar Prasad Yadav @ Shankar Ray Son of Ram Balak Yadav, Resident of Village - Mangalgarh, P.S. - Hasanpur, District - Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Samastipur at Samastipur.
2. The Additional Collector, Samastipur at Samastipur.
3. The Anchaladhikari, Hasanpur at Hasanpur, District - Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dilip Kumar Roy
For the Respondent/s : Mr.Rishi Raj Sinha (SC-19)

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

4 28-02-2022 Learned counsel for the petitioners is directed to remove all the defects pointed out by the Stamp Reporter within one month.

Heard the learned counsel for the petitioners as well as the learned counsel for the respondents.

The present civil miscellaneous application has been filed for quashing the order dated 25th August, 2021, passed by the learned Additional District judge-X, Samastipur in Title Appeal No. 14 of 2018, whereby the learned appellate court has rejected the petition of the appellants/petitioners filed under Order XLI, Rule 27 of the Code of Civil Procedure,1908,



hereinafter to be referred to as ‘the Code’ for exhibiting the certified copy of the power attorney as additional evidence.

The learned counsel for the petitioners has submitted that they purchased the property in dispute from the Manager of Darbhanga Maharaj, who holds the power of attorney and the Title Suit No. 117 of 2005 was instituted for declaration of title and possession over the purchased land.

The averment of the petitioners itself shows that the power of attorney was well within their knowledge since the institution of the suit as the base of the suit is the sale deed in favour of the plaintiffs/appellants through power of attorney.

Three conditions have been given in which an additional evidence can be taken in accordance with the Order XLI, Rule 27 of the Code which are as follows:-

“(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, established 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 learned counsel for the petitioners has further submitted that their case comes under the second clause of above-noted three grounds i.e. Order XLI, Rule 27 (aa), which says that the additional evidence can be taken if the party 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.

The petitioners claiming themselves to be purchaser from the power of attorney holder and the suit was instituted on the basis of the sale deed executed by power of attorney. As such, the aforesaid document i.e. power of attorney was well within the knowledge of the plaintiffs at the beginning of the trial. As such, the learned trial court did not commit any error in refusing the petition under Order XLI, Rule 27 of the Code.

Accordingly, this civil miscellaneous application is dismissed.



Office shall ensure that all the defects are removed by the petitioner within the stipulated time provided in para 1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey , J)

HR/-

U			
---	--	--	--

