

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.807 of 2018

Atma Nand Swarup S/o Late Lakhpati Mandal resident of Hussain Nagar
Mahuli, P.S. - Muffasil, District Munger.

... .. Petitioner/s

Versus

1. Smt. Shanti Devi wife of Mohan Prasad
2. Mohan Prasad S/o Late Shyamalal Kasera Both residents of Mohalla -
Purabsarai, Durga Sthan, P.S. - Kotwali, District - Munger.
3. Smt. Lalita Devi W/o Braj Nandan Prasad Gupta resident of Purabsarai,
Durga Sthan, P.S. - Kotwali, District - Munger.
4. Urmila Devi W/o Late Lakhpati Mandal
5. Ramdeo Mandal S/o Late Lakhpati Mandal
6. Rajbali Mandal S/o Late Lakhpati Mandal All respondent No. 4 to 6
residents of Hussain Nagar Mohli, P.S. - Muffasil, District - Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ram Sevak Choudhary, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 08-09-2022 Heard Mr. Ram Sevak Choudhary, learned counsel
for the petitioner.

2. Petitioner is defendant no.1/purchaser in the suit
filed by the respondents who is aggrieved by order dated
23.04.2018 passed by learned Additional Sessions Judge 5th,
Munger in Title Appeal No. 11/2012 whereby the petition filed
by the respondents/appellant for verification of signature of
defendant no.1 through an expert has been allowed under Order
41 Rule 27.

3. Learned counsel for the petitioner submits that the



petitioner is the purchaser from defendant No. 2, Lalita Devi who was defendant no.1 in the suit filed by Smt. Shanti Devi, Respondent No. 1 herein for specific performance of agreement.

4. He next submits that in the suit plaintiff no.2 deposed that the signature of the defendant No. 2, Lalita Devi is not required to be verified through the expert. He also submits that at belated stage, a petition has been filed by the respondents that the learned court below did not consider the Exhibit-1 and returned wrong finding without any cogent reason and did not compare the signature of Lalita Devi, defendant No.2 on written statement and the agreement for sale i.e., Ext-1.

5. Learned counsel further submits that the plaintiff has deposed during course of trial that they are not willing to get the signature of defendant no. 2 examined through the expert and filed a petition at appellate stage for additional evidence under Order 41 Rule 27 at belated stage amounts to blowing hot and cold at the same time. The learned appellate court without appreciating the fact that the prayer for additional evidence has been filed at belated stage has allowed the verification of the signature put by defendant no. 2, Smt. Lalita Devi on the agreement for sale. He next submits that it is the specific case of Lalita Devi (Defendant No. 2), that the plaintiff/respondent has



committed fraud and created forged agreement for sale to achieve wrongful gain and the defendant never agreed to sell her house to the plaintiff/respondent for consideration.

6. In support of his argument, learned counsel for the petitioner relies upon a judgment of Hon'ble Supreme Court passed in the case of *Union of India v. Ibrahim Uddin* as reported in *(2013) 1 PLJR (SC) 48*, for the proposition that delayed petition for additional evidence should not be allowed.

7. I have heard learned counsel for the petitioner. It appears that defendant No.2 has not approached this Court and the petitioner being purchaser and respondent/defendant has challenged the order accepting the prayer of the appellant for getting signature put on the agreement for sale verified through the expert. From perusal of the impugned order, it appears that though the petition was filed for additional evidence on 10.02.2015 but the learned lower appellate court has considered it at the time of argument which is permissible as held by the Hon'ble Supreme Court in the aforesaid judgment (*supra*) that petition for taking additional evidence at an appellate stage, even if the same has been filed during pendency of the appeal is required to be taken at the time of final hearing of the appeal i.e., at the stage when after appreciating the evidence on record



the court reaches a conclusion that additional evidence was required to be taken in order to pronounce the judgment or for any other substantial cause.

8. It appears that the learned lower appellate court has considered the application for additional evidence at the stage of argument and upon appreciation of the evidence, the specific case of the defendant no. 2, Lalita Devi that her signature has been forged, directed for verification/examination of her signature by an expert in order to pronounce the effective judgment.

9. In view of the aforesaid discussions, I do not find any illegality and material irregularity in the impugned order. Accordingly, this petition is, hereby, dismissed.

(Anil Kumar Sinha, J)

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