

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.310 of 2018

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Alga Devi @ Most. Alagi Devi W/o Late Chakaudi Ahir resident of village -
Mazirwa Khurd, Pargana Kuari, P.S. - Mirganj, District - Gopalganj.

... .. Petitioner/s

Versus

1. Ganesh Kuar and Ors s/o Surya Kuar
2. Dina Kuar s/o Surya Kuar
3. Akhleshwar Kuar s/o Dokhtar Kuar
4. Apaewar Kuar s/o Dokhtar Kuar
5. Kamleshwar Kuar s/o Dokhtar Kuar
6. Balichar Kuar s/o Ramchandra Kuar
7. Gharan Kuar s/o Ramchandra Kuar
8. Smt. Ramabati Devi w/o Triloki and D/o Ramchandra Kuar All residents of
village - Mazirwa Khurd, Pargana Kuari, P.S. - Mirganj, O.P. Missir
Batahan, District - Gopalganj.
9. Sheoshankar Mishra s/o Kishundeo Mishra
10. Ishwari Dutta Mishra s/o Sarbanand Mishra
11. Pradyuman Mishra alias Vidya Mishra
12. Narsingh Mishra s/o Sheoshankar Mishra alive All residents of village
Missir Batarahan Prag Kuari P.S. Mirganj, District - Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok, Advocate
For the Respondent/s : Mr. Nagendra Rai,

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

15 29-08-2023

I.A. No. 01 of 2023.

The present interlocutory application has been filed
on behalf of the petitioner seeking amendment in the prayer
portion of the writ petition.

For the reasons mentioned in the interlocutory
application, the same (I.A. No. 01 of 2023) is allowed.



Accordingly, the averments made in the I.A. No. 01 of 2023 shall be treated to be the part of the main application.

I.A. No. 02 of 2023.

The respondents No. 2, 3, 6, 9 and 10 have died.

The substitution petition has been filed for deleting their names and substituting their legal heirs and the substitution petition is within time.

The office is directed to substitute the legal heirs of the deceased respondents as mentioned above.

C. Misc. No. 310 of 2018.

Mr. Nagendra Rai appears on behalf of the respondents no. 1, 3 and 7 and submits that the interest of all the plaintiffs is same and this case may be disposed after hearing Mr. Nagendra Rai.

In the interest of justice, this application is being heard without issuing notice to other respondents who are also plaintiffs in the Court below as Mr. Rai has appeared for some of the plaintiffs and the stand of all the plaintiffs in the Court below is same.

The application for additional evidence filed by the petitioner has been dismissed by the impugned order dated 11.01.2018.



It has been submitted by the learned counsel for the petitioner that the petitioner is a *parda nasheen* lady and she had given the documents in question to her lawyer at the start of the Suit but due to the mistake committed by the lawyer the same has not been exhibited during the proceedings in the Suit stage, and therefore, in the interest of justice the application for additional evidence may be allowed.

Mr. Rai opposes the application and submits that the ground for additional evidence which is being taken by the learned counsel for the petitioner is not a genuine ground. The documents were in the possession of the petitioner and the petitioner has failed to get the same exhibited in the Suit, and therefore, the application has been rightly dismissed by the Court below.

I have considered the submission of the parties.

Order - 41 Rule – 27 of the Code reads as follows:

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 produce, 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.

I am of the opinion that the present application can be allowed for a substantial cause i.e. in the interest of justice.

In view of the above discussion, this application is allowed.

The appellate Court will give the right of rebuttal to the plaintiffs after the additional evidence is laid before it.

In case, the plaintiffs want to lead any evidence in the facts of the case that will be considered by the appellate Court.

With the aforesaid observations and directions, this application is allowed.

(Sandeep Kumar, J)

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