

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.723 of 2019

Md. Haroon @ Raghu Son of Late Haji Hussain @ Haji Mian R/o Village-Kathia, Mathia, Tola Pokharia, P.O.-Parsurampur, P.S.-Kangali, District-West Champaran

... .. Petitioner/s

Versus

1. Faiyazul Azam @ Faizaul Azam Son of Anis Mian R/o Village-Kathia, Mathia, Tola Pokhariya, P.O.-Parsurampur, P.S.-Kangali, District-West Champaran
2. Afzal Ali Minor son and under care and guardianships of his father Faiyazul Azam @ Faizaul Azam R/o Village-Kathia, Mathia, Tola Pokhariya, P.O.-Parsurampur, P.S.-Kangali, District-West Champaran
3. Mahtab Ali Minor son and under care and guardianships of his father Faiyazul Azam @ Faizaul Azam R/o Village-Kathia, Mathia, Tola Pokhariya, P.O.-Parsurampur, P.S.-Kangali, District-West Champaran
4. Hari Shankar Prasad Shahi S/o Late Hari Madav Shahi At present residing in mohalla-Ujjain Tola, Dak Bangala Road, Bettiah, P.O. and P.S.-Bettiah (T), District-West Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Akhileshwar Kumar Shrivastva
For the Respondent/s : Mr.Shiv Kumar Dwivedy

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 31-10-2023 Heard the parties.

2. This application has been filed for setting aside the impugned order dated 23.03.2019 passed by the learned Additional and Sessions Judge, VI, Bettiah, West Champaran in Title Appeal No. 04 of 2016. By the impugned order the application for leading additional evidence has been rejected by the Court below.

3. Learned counsel for the petitioner submits that the documents were in possession of his brother who had gone to



Punjab to earn is livelihood and therefore the documents were not available with him and the same could not be exhibited during the course of the hearing of the Title Suit.

4. Learned counsel for petitioner also relies upon a judgment of the Hon'ble Supreme Court in the case of *Jayaramdas & Sons vs Mirza Rafaulah Baig & Ors* reported in *2004 10 SCC 507*.

5. Learned counsel for the respondents has submitted that the suit was filed in the year 2015 and it is very hard to believe that the brother of the petitioner was not in touch with the petitioner for eight years and the grounds which has been raised by the petitioner for leading additional evidence are not good grounds and the petition of the petitioner may be dismissed.

6. Order 41 Rule 27 of the C.P.C. reads as follows:-

"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."

7. The petitioner in Paragraph 12 of his petition has stated as follows:-

" That during pendency of said appeal, on 25.02.2019 the petitioner filed application Under Section 41 Rule 17 of the CPC for adducing additional evidence and for bringing the documentary evidence i.e. (1) said exchange document "Chitha" (2) both the said two registered sale deeds and (3) C.C. of entire order sheet of said Ceiling Case No. ¾ of 73-74. Which was missed out to led evidence in suit proceedings, as the claim of petitioner based on these documents which were clearly pleaded in the plaint, as the all said documents were not filed by the petitioner after exercise of due diligence because all these documents were stealthy, kept by the brother of the petitioner. It is also submitted that the petitioner who is rustic person only know to write his name and resident of an remote area on Nepal border has got no knowledge of the process of the Court. The list of aforesaid documents sought to be introduce as evidence is also attached with the petition."



8. From reading the aforesaid paragraph, it appears that the petitioner wants to bring on record a number of documents which could not be brought during the hearing of the Title Suit and it also appears that the petitioner was negligent and after the decision of the Title Suit he wants to adduce additional evidence.

9. This Court will not come to the rescue of a litigant who has not been vigilant enough during the course of the hearing of the Title Suit. The Judgment in the Case of *Jayaramdas & Sons vs Mirza Rafaulah Baig & Ors(Supra)* is also not of any help to the petitioner as the basic ingredients for leading additional evidence is missing in the case of the petitioner.

10. In view of the above discussions, this application is dismissed. The appellate Court is directed to decide the Title Appeal within three months from the date of receipt/communication of a copy of this order.

(Sandeep Kumar, J)

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