

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 480 of 2022

1. Sarban Sah @ Shrvan Kumar Sah @ Shrvan Sah Son of Late Bindeshwari Sah, Paregna- Malki, Thana, Sub - Division and District- Begusarai.
2. Suresh Sah Son of Late Bindeshwari Sah, Paregna- Malki, Thana, Sub - Division and District- Begusarai.

... .. Petitioner/s

Versus

Shyam Prasad Singh S/o Late Fulha Singh, R/o Hal Hemra, Thana, Sub - Division and District- Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Pritish Kumar Lal, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

3 25-08-2023 Heard learned counsel for the petitioners.

2. Learned counsel for the petitioners is permitted to correct the cause title in the Miscellaneous Application during the course of the day.

3. This Civil Miscellaneous Application has been filed against the order dated 30.03.2022 passed by the learned Additional District Judge-XII, Begusarai in Title Appeal No. 30 of 2015 whereby petition under Order 41 Rule 27 C.P.C. has been allowed and observed that the documents filed by the respondent are required by the Court in the interest of justice to pronounce the judgment.



4. The plaintiffs / petitioners filed Title Suit No. 295 of 2009 in the Court of Sub-Judge, Begusarai seeking a decree of partition of the suit property which was dismissed on contest vide judgment dated 25.07.2015 against which the petitioners preferred an appeal being Title Appeal No. 30 of 2015. The petitioner made a prayer to amend the plaint by substitution of Khata No. 32 instead of Khata No. 52 which was a typing mistake and the same was allowed. The respondent filed petition under Order 41 Rule 27 C.P.C. two times with prayer to admit documents mentioned therein on the ground of necessity of those documents in the adjudication of appeal which was dismissed in default and dismissed as withdrawn respectively. However, the petition of respondent under Order 41 Rule 27 read with Section 151 C.P.C. was allowed by the impugned order.

5. Learned counsel for the petitioners submits that petitioners are aggrieved by the impugned order to the extent that the appellate Court below has exhibited the documents in question without following the procedure to prove the documents in accordance with law. He further submits that there is a procedure in Indian Evidence Act for admitting of private documents in evidence and accordingly, the appellate Court may



permit the respondent to take the appropriate steps for exhibiting the private documents i.e. certified copy of sale deeds, in accordance with law. Accordingly, he submits to dispose of this application with observation.

6. The law is well settled that where 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 case and interest of justice clearly renders it imperative that it may be allowed to be permitted on record such application may be allowed. 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 the appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause.

7. As per the provisions of Order 41 C.P.C., the appellate Court may permit additional evidence to be produced whether oral or documentary, if the conditions mentioned in Order 41 Rule 27 C.P.C. are satisfied after the additional evidence is permitted to be produced in exercise of powers under Order 41 Rule 27. Thereafter, the procedure under Order



41 Rule 28 and 29 is required to be followed.

8. In view of the aforesaid facts and the law discussed above, this Civil Miscellaneous Application is disposed of with observation that the procedure under Order 41 Rule 28 with respect to mode of taking additional evidence shall be followed by the learned appellate Court below, if the same is not complied with.

9. With this observation, this Civil Miscellaneous Application is disposed of.

(Sunil Dutta Mishra, J)

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