

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.502 of 2021**

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Mohammad Mustakim @ Sheikh, Son of Sheikh Sharafat, Resident of Village-Amdanda, Police Station-Sanhoula, now Sanokhar, District-Bhagalpur.

... .. Petitioner/s

Versus

1. Md. Rasheed, Son of Sk. Auldi, Resident of Village-Amdanda, Police Station-Sanhoula, now Sanokhar, District-Bhagalpur.
2. Md. Jawed, Son of Kadar Ali (deceased), Resident of Village-Chhagraha, Police Station-Maharma at present Balbadda, P.O. and Police Station-Balbadda, District-Godda (Jharkhand).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Manoj Kumar, Advocate
For the Respondent/s : Mr. Rajendra Kumar Jain, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT**

Date : 08-05-2023

Heard learned counsel for the petitioner.

2. The present Civil Miscellaneous Application has been filed against the order dated 18.01.2021, passed by learned Additional District Judge- IX, Bhagalpur in Title Appeal No.- 16 of 2002, whereby and whereunder the petition dated 11.12.2019, filed by the petitioner under Order 41 Rule 27 and Section 151 of the Code of Civil Procedure (for short 'CPC') has been rejected.

3. The brief facts of the case are that the plaintiff/respondent no. 1 filed Title Suit No. 122 of 1991 against the defendants praying to declare that defendants are bound by contract of specific performance and defendant no. 1 is bound to execute the sale deed in favour of the plaintiff after



receiving balance consideration money of Rs. 20,000/- and that sale deed in favour of defendant no. 2 be declared as void. The defendants appeared and filed their written statement and denied the assertions of the plaintiff in the plaint. The learned Sub-Judge 1st, Bhagalpur, after hearing the parties, decreed the suit vide judgment and decree dated 30.01.2002, directing the defendants to execute the sale deed in favour of plaintiff within three months after receiving balance consideration money. Against the said judgment and decree defendants preferred Title Appeal No. 16 of 2002.

4. During the pendency of the Title Appeal, the petitioner filed an application under Order 41 Rule 27 read with Section 151 CPC, praying therein to accept the deed of agreement dated 30.08.1989, as an additional evidence on the ground that the original deed of the said agreement dated 30.08.1989, has been executed by defendant 1st party in favour of defendant 2nd party was misplaced and the same could not be filed at the time of trial of the Title Suit No. 122 of 1991. The learned Appellate Court below vide impugned order dated 18.01.2021, rejected the said petition.

5. Learned counsel for the petitioner submits that the Appellate Court failed to consider the provision of Order 41



Rule 27 CPC which entitles the Appellate Court to take additional evidence if the party failed to produce the same during the course of trial by sufficient reason. He has further submitted that the said document is necessary for just decision of issue involved in the suit and the petitioner shall suffer irreparable loss and injury if the document in question is not taken in additional evidence.

6. On the other hand, learned counsel for the respondents submits that the petitioner had not acted with due diligence and the application of the petitioner has been rightly rejected by the learned Trial Court after hearing the parties and considering the facts and circumstances of the case. He has further submitted that there is no jurisdictional error or illegality in the impugned order and it is not required by this Court to interfere under supervisory jurisdiction in the reasoned order.

7. The Hon'ble Supreme Court in the case of **A. Andisamy Chettiar Vs. A. Subburaj Chettiar** reported in **(2015) 17 SCC 713** discussed the principles for taking additional evidence under Order 41 Rule 27 CPC. Generally parties are not entitled to produce additional evidence, oral or documentary, at appellate stage unless (i) Trial Court has refused to admit evidence which ought to have been admitted



(ii) party could not produce evidence at trial stage in spite of his due diligence and (iii) when Appellate Court requires any document or witness for pronouncement of judgment or for any other substantial clause. It has been observed that the parties are not allowed to fill the lacuna at the appellate stage. It is against the spirit of the Code to allow a party to adduce the additional evidence without fulfillment of either of the three conditions mentioned in Rule 27.

8. The Hon'ble Apex Court in the aforesaid Judgment referred the Judgment in the case of **K.R. Mohan Reddy Vs. Net Work Inc. (2007) 14 SCC 257** wherein the Hon'ble Supreme Court held that:-

“ 19. The appellate court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial Court, but it will be different if the court itself requires the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the court. But mere difficulty is not sufficient to issue such direction.”

9. The Hon'ble Supreme Court also referred the judgment in the case of **Union of India Vs. Ibrahim Uddin** reported in **(2012) 8 SCC 148** wherein the Hon'ble Supreme Court held that:-



“ 49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/ bearing on the issues involved. 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 or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.”

10. The Hon'ble Supreme Court in case of **Mahavir Singh Vs. Naresh Chandra, (2001) 1 SCC 309** observed that when the Appellate Court requires such evidence to pronounce the judgment and necessity to adduce the additional evidence would arise and not in any other circumstances. It was further observed that when the 1st Appellate Court passed the order on application filed under Order 41 Rule 27 CPC, the petitioner's appeal was before it and if the First Appellate Court is satisfied that additional evidence was not required, we fail to understand as to how the High Court would interfere with such an order under Section 115 of



the CPC.

11. In the present case, the suit was filed in the year 1991 and was decided on 30.01.2002, and the first appeal was filed in the year 2002. The petitioner failed to bring the said document on record in trial stage and he has filed the petition on 11.12.2019 at belated stage in the First Appeal. The law is well settled that the parties are not allowed to fill the lacuna at the appellate stage.

12. The Court below has rejected the said application by the impugned order which is within jurisdiction of the court below and it cannot be said that the court has passed the order without its jurisdiction and in my considered view, there is no jurisdictional error or illegality in the impugned order. The Civil Miscellaneous Application is devoid of any merit and liable to be rejected.

13. This Miscellaneous Application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.05.2023
Transmission Date	

