

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.945 of 2017

1. Shambhu Nath Pathak
2. Krishna Kant Pathak
3. Mankeshwar Nath Pathak All S/o late Rajdeo Pathak
4. Malti Devi
5. Madhuri Devi
6. Mahima Devi
7. Mala Devi
8. Mamta Devi
9. Mithilesh Devi All D/o of late Rajdeo Pathak

... .. Petitioner/s

Versus

1. Baleshwar Pathak S/o Late Munimahesh,
2. Savitri Devi, W/o Baleshwar Pathak, Both are resident of Vill- Baishakhi, P.O.- Hardiya, Via- Siwan, P.S.- Sarai O.P. Pachrukhi Dist- Siwan.
3. Babita Kumari, D/o Murlidhar Mishra, Resident of Village P.O.P.S.- Raghunathpur, Dist- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vijay Kumar Mishra, Adv. Mr. Shovendra Kumar, Adv.
For the Respondent/s	:	None

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 26-09-2024

Heard learned counsel for the petitioners.

2. Further, despite service of notice none appears for the respondents.

3. The petitioners are aggrieved by the order dated 13.04.2017 passed in Title Appeal No. 01 of 1989 whereby and whereunder the learned Court of Vth District Judge, Siwan has partly allowed the application filed by the petitioners under Order 41 Rule 27 of the Code of Civil Procedure (in short “the Code”) and refused to entertain the prayer of the petitioners for taking on record certain additional pieces of evidence.



4. Learned counsel for the petitioners submits that the order has been passed by the learned trial court in apparent error of jurisdiction. The petitioners who are appellants before the learned first appellate court tried to bring on record documents with regard to certain subsequent developments which is permissible under Order 41 Rule 27 of the Code. However, the learned first appellate Court refused to admit those documents on the ground that the documents are not required to be admitted in evidence as they are not relevant and not required for just decision of the appeal. Learned counsel further submits that the respondents connived with each other and entered into a fraudulent compromise and started selling the suit property. The said compromise was challenged by the petitioners and the compromise was set aside. The documents relate to the said compromise. All the development took place during pendency of the appeal and after passing of the judgment and decree in Title Suit No. 273/84. Learned counsel further submits that, however, the learned First Appellate Court took on record an order of this Court passed in Cr. Misc. No. 13157/07 dated 09.09.2008 whereby and whereunder this Court reversed the finding of the learned Trial Court in a criminal case filed by the respondents against the petitioners for committing forgery and cheating. Thus learned counsel submits that the impugned order is not sustainable and the same be set aside.

5. I have given my thoughtful consideration to the submission of the learned counsel for the petitioner in the facts and



circumstances of the case. Apparently the impugned order has been passed prior to final hearing. Hon’ble Supreme Court, in the case of *Union of India Vs. Ibrahim Uddin & Anr.* reported in **2013 (1) PLJR (SC) 48**, has held that an application under Order 41 Rule 27 of the Code must be heard and disposed of at the time of final hearing of the appeal and the same could not be disposed of prior to the final stage of hearing of the appeal. This approach of Hon’ble Supreme Court is based on the reason that at the time of final hearing the Court would be in a position to decide whether the documents are necessary for just and proper decision of the appeal. Since the application of the petitioners filed under Order 41 Rule 27 has been disposed of prior to the final stage, the impugned order, on this sole ground, could not be sustained and hence, without further going into the merits of the case, the order dated 13.04.2017 is set aside and the matter is remanded to learned first appellate court to pass orders afresh in terms of orders of the Hon’ble supreme court in the case of *Union of India Vs. Ibrahim Uddin & Anr* (supra).

6. With the aforesaid observation the present petition stands disposed of.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01.10.2024
Transmission Date	N/A



