

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1342 of 2017

Yogendra Ram son of Jaldhar Ram, Resident of Village- Merhalla, P.O.- Narwara, P.S.- Tariyani, District- Sheohar.

... .. Petitioner/s

Versus

1. Ghandeshwar Singh
2. Ram Babu Singh,
3. Chandraket Singh, sons of Rajendra Singh,
4. Lalti Devi, D/o Rajendra Singh, Respondent no.1 to 4 resident of Village- Kodariya, P.s.- Sibaipatti, District- Muzaffarpur.
5. Naresh Prasad, son of Saryug Prasad, resident of Village- Harser, P.S.- Sibaibatti, District- Muzaffarpur.
6. Ram Ekbal Singh, son of Baldeo Singh,
7. Narendra Singh,
8. Mukesh Singh,
9. Dhananjay Singh, son of Late Baleshwar Singh,
10. Manoj Singh,
11. Rakesh Singh,
12. Mukul Singh, sons of Late Asarfi Singh, Respondent no.6 to 12 residents of Village- Harser, P.S.- Sibaipatti, District- Muzaffarpur.
13. Maina Devi, wife of Late Raj Kumar Ram,
14. Musafir Ram, son of Late Raj Kumar Ram,
15. Dulari Devi, wife of Late Laxaman Ram, Respondent no. 13 to 15 of Village- Ganga Dharampur, P.S.- Teriyani, District- Sheohar.
16. Madhu Devi, wife of Mahede Ram, D/o Late Raj Kumar Ram, Resident of Village- Naknama, P.S.- Shibaipatti, District- Muzaffarpur.
17. Sohan Ram,
18. Mohan Ram,
19. Bhirangi Ram, sons of Late Saryug Ram, Respondet no. 17 to 19 resident of Village- Harser, P.S.- Shibaipatti, District- Muzaffarpur.
20. Tetari Devi, D/o Late Suraj Ram, wife of Vishnudeo Ram, resident of Village- Mor, P.O.- Salempur, District- East Champaran.

... .. Respondent/s

Appearance :

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



CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
Date : 21-02-2024

Heard learned counsel for the petitioner on the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The instant petition has been filed challenging the order dated 07.04.2017 passed by learned 3rd Additional District Judge, Muzaffarpur in Title Appeal No. 03 of 2012, whereby the learned First Appellate Court has rejected the prayer of the petitioner/appellant for producing additional evidence, like comparative map prepared by Amin.

3. Learned counsel for the petitioner submits that the petitioner is the appellant before the learned First Appellate Court, who had earlier filed Title Suit No. 193 of 2022 before the learned Sub Judge-Ist, Muzaffarpur, which was decreed against the plaintiff, against which the aforesaid title appeal was preferred. While dismissing the suit, the learned trial court in its judgment observed that the plaintiff/petitioner has not brought on record the comparative map with regard to old and new survey plot in dispute. In these circumstances, the petitioner filed a petition before the learned First Appellate Court to take into evidence the comparative map of old and new survey prepared by survey knowing Amin. The prayer was opposed by



the respondents. The learned First Appellate Court went on to reject the petition of the petitioner without considering its merit. Learned counsel further submits that the impugned order of the learned court below is bad in the eyes of law. The comparative map of old and new survey plots is necessary to clarify that from cadestral survey certain new plots have been carved out but the learned First Appellate Court did not consider the same and rejected the prayer for the additional evidence and hence, the impugned order is not sustainable in the eyes of law and same be set aside.

4. Order XLI Rule 27 reads as under:-

“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 produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

The Hon'ble Supreme Court in the case of **A.**

Andisamy Chettiar vs. A. Subburaj Chettiar, reported in **(2015)**

17 SCC 713 in paragraph 12 held as under:-

“12. From the opening words of sub-rule (1) of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against



the spirit of the Code to allow a party to adduce additional evidence without fulfilment of either of the three conditions mentioned in Rule 27. In the case at hand, no application was moved before the trial court seeking scientific examination of the document (Ext. A-4), nor can it be said that the plaintiff with due diligence could not have moved such an application to get proved the documents relied upon by him. Now it is to be seen whether the third condition i.e. one contained in clause (b) of sub-rule (1) of Rule 27 is fulfilled or not.”

5. From perusal of the impugned order I find that the learned First Appellate Court has mentioned that it was not clear that when the Amin has prepared the comparative map and when the comparative map was prepared. From further perusal of the copy of the petition which was filed before the learned First Appellate Court for producing additional evidence. Para 2 of the petition reads as under:-

“That in the portion of Judgment in page no. 89 in para-2 in line no. 3, 4, it has been mentioned that the Plaintiff/Appellant could not produce



sufficient documents like comparative map so that Plaintiff/Appellant seeks your permission to allow the Appellant to file Additional Evidence so that he may file comparative map prepared by Amin as Evidence.”

6. Obviously, the petitioner has failed to bring the details of the comparative map which was sought to be brought on record. Further, it is also apparent from the contents of the petition that the petitioner has failed to show due diligence and has not assigned any reason why the said map was not produced at the time of evidence before the learned court below. After so many years, the plaintiff cannot be allowed to fill up the lacunae in his case and counter the reasons given for dismissal of the suit in such manner.

7. Hence, I do not find any merit in the present petition and accordingly, it is dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.02.2024
Transmission Date	NA

