

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.70 of 2017**

1. Most. Bimla Devi Wife of late Ramanand Singh.
2. Santanu Kumar @ Ram Archa.
3. Manoranjan Kumar @ Ramayanjee, Both are sons of Late Ramanand Singh, all are resident of Village Meghaul, Pargana Bhusari, P.S. and Anchal Khodawanpur, Sub-Division Manjhaul, District- Begusarai.

... .. Petitioner/s

Versus

1. Most. Laxmi Devi Wife of Late Parmanand Singh.
2. Arunjay Kumar Singh @ Santosh Kumar.
3. Mantosh Kumar, Both are Sons of Late Parmanand Singh, all are resident of village Meghaul, P.O. Meghaul, Pargana Bhusari, P.S. and Anchal Khodawanpur, S.D. Manjhaul, District Begusarai- at Present Village Cheriya Bariarpur, Near Thana, S.D. Manjhaul District Begusarai.
4. Ram Kishore Yadav, Son of Tanuk Yadav, resident of Village Meghaul P.S. and Anchal Khodawanpur, S.D. Manjhaul, District- Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gouranga Chatterjee, Advocate Mr. Sahil Kumar, Advocate Mr. Pulkit Rajan, Advocate Mr. Anirvan Choudhauri, Advocate Mr. Ujjwal Raj, Advocate
For Respondent No.4	:	Mr. H.P. Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 12-01-2024

Heard learned counsel for the petitioners and learned
counsel for respondent no.4.

2. The petitioners have challenged the order dated 9th
of November, 2016, passed by learned Additional District
Judge-II, Begusarai in Title Appeal No. 01 of 2010, whereby
and whereunder learned Court has dismissed an application,



filed on behalf of the petitioners under Order XLI Rule 27 of the Code of Civil Procedure (hereinafter referred to as 'CPC').

3. The case of the parties, as emerges from the record, is that the petitioners were plaintiffs in the Court of learned Munsiff 1st, Begusarai and they filed Title Suit No. 26 of 2004 for declaration that the plaintiffs and the husband of defendant 1st party orally partitioned the lands which were allotted to them jointly in Title Suit No. 32 of 1965 by learned Sub Judge, Begusarai in August 1980 and both the parties came in separate possession of their shares, respectively. The husband of defendant no.1/ respondent no.1 died in 1991. The plaintiff no.1 and husband of defendant no.1 were full brothers and plaintiff nos. 2 and 3 are sons of plaintiff no.1, whereas defendant nos. 2 and 3 are sons of defendant no.1. Earlier a partition suit bearing No. 32 of 1965 was filed and both the brothers came in possession of their shares jointly. Thereafter, an oral partition took place between plaintiff no.1 and his brother, the late husband of defendant no.1, in August, 1980 and thereafter both the brothers separated in mess and business and they had no concern with each other. After death of the brother of plaintiff no.1, some dispute arose with respect to cultivation of land. Therefore, a memorandum, based on the earlier oral partition,



was prepared and parties put their signatures on the said document, allotting properties of Schedule III of the plaint in the share of the plaintiffs and properties of Schedule IV to the defendants. After oral partition of August, 1980, the husband of defendant no.1 had sold some land from his share of the property to the plaintiff and the defendants were threatening to interfere with the land belonging to the plaintiffs. Further, during pendency of the suit, the defendants sold two kathas of land appertaining to Plot No. 1126, Khata No. 110, Tauzi No. 1091 and Thana No. 29 in favour of respondent no.4, which belonged to the plaintiff who was in possession. Therefore, an amendment was sought to challenge the sale deed which was allowed vide order dated 16th of February, 2006. Schedule-V of the plaint was added to show the land sold by the defendants in favour of respondent no.4. The suit before learned Munsif proceeded *ex parte* against defendant nos. 1 to 3. Defendant no.4 appeared in the Court, but did not file his written statement and hence, the case proceeded against him under Order VIII Rule 10 of the CPC. After considering the evidence, learned Trial Court dismissed the suit of the plaintiffs/petitioners vide judgment dated 30th of October, 2009, which was challenged by the plaintiffs in Title Appeal No. 01 of 2010 in the Court of



learned District Judge, Begusarai. During pendency of the appeal, the plaintiffs/appellants/petitioners filed an application dated 18th of June, 2016 in the Court of learned Additional District Judge-II, Begusarai to call for the original records of Partition Suit No. 32 of 1965 from the Civil Court, Begusarai. However, the learned Appellate Court directed the appellants to file the certified copy of the Partition Suit No. 32 of 1965 and thereafter, the appellants applied for the certified copy, which was provided to the appellants on 10th of August, 2016. In the meantime, the appeal was heard and was fixed for judgment on 17th of August, 2016. On 17th of August, 2016, the appellants filed the certified copy of the Partition Suit No. 32 of 1965 with an application to accept the documents giving reasons for not filing the same earlier. The application of the petitioners was objected to by the respondent no.4. Learned Additional District Judge-II, Begusarai heard the application under Order XLI Rule 27 CPC and rejected the same on the ground that the appellant was having knowledge about existence of the said documents and there has been no cogent and valid proof that proper steps were taken for obtaining the documents and therefore there was no satisfactory and plausible as well as genuine grounds to show that due diligence has been taken by the appellants. The learned



Appellate Court went on to dismiss the application of the plaintiffs/appellants/petitioners vide its order dated 9th of November, 2016, which is under challenge before this Court.

4. Learned counsel appearing on behalf of the petitioners submits that the impugned order is illegal, arbitrary and bad in law. The learned 1st Appellate Court has not appreciated the scope and ambit of Order XLI Rule 27 CPC. Learned counsel further submits that the plaintiff did not produce the document at the first instance since there was no denial of the partition in the year 1965 vide Title Suit No. 32 of 1965 and no issue was framed on this aspect. So there was no occasion for the plaintiffs to bring the documents on record before learned Trial Court. However, the learned Trial Court dismissed the suit of the plaintiffs referring to the contention of the plaintiffs about existence of such documents, which it ought not to have done. Learned Trial Court passed its judgment for not bringing on record the said document by the plaintiffs and for this reason, it became necessary for the plaintiffs to bring the said documents on record as additional evidence before the learned 1st Appellate Court.

5. Learned counsel further submits that the plaintiffs/appellants prayed before the learned 1st Appellate



Court to call for the record of Title Suit No. 32 of 1965, but the prayer was declined with direction to the plaintiffs/appellants to get the certified copy of the said documents. Since it was an old record, it took time and thereafter when the certified copy of the documents was furnished to the plaintiffs, they filed it on record. Learned counsel further submits that the documents are necessary to decide the real issue in controversy between the parties, since the basis of title in respect of land sought to be partitioned, is the order passed by learned Sub Judge in Partition Suit No. 32 of 1965 and it has not been appreciated by learned 1st Appellate Court. Hence, the impugned order be set aside and the application of the petitioners be allowed.

6. Learned counsel appearing on behalf of respondent no.4 vehemently opposed the submissions made on behalf of the petitioners submitting that a document can be produced as an additional evidence before the learned Appellate Court under Order XLI Rule 27 of the CPC only under two conditions that the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted and the party seeking to produce additional evidence, establishes due diligence that he could not have produced the documents despite making efforts. In this case, both the ingredients are missing.



The petitioners did not make any prayer before learned Trial Court for bringing the documents on record. At the same time, they were having all the knowledge since beginning and despite this knowledge, they failed to bring the documents on record before learned Trial Court. Hence, the petitioners have no case before this Court. Even the learned Appellate Court has held that the appellants had very much knowledge of the existence of the said document and there is no any cogent and valid reason that any prompt attempt was made for obtaining the same and there was no satisfactory and plausible as well as genuine grounds to show that due diligence has been made by the appellants to procure the said document. In the circumstances, bringing the documents on record cannot be allowed and learned Appellate Court has rightly rejected the petition filed under Order XLI, Rule 27 of the CPC.

7. Perused the records.

8. Despite service of notice, respondent nos. 1 to 3 chose not to appear in this case. However, respondent no.4 appeared through learned counsel who has already been heard.

9. Having regard to the submissions made hereinbefore, the short point for consideration is whether the certified copy of documents related to Partition Suit no. 32 of



1965 could be brought on record at the appellate stage as evidence under Order XLI Rule 27 of the CPC or not? From the facts of the case as enumerated before this Court, what transpires is that the matter of bringing the said document on record before the learned Trial Court did not arise, since the issue was not in dispute and the fact of partition of 1965 was not under challenge. So on this point, plaintiffs have a case.

10. Order XLI Rule 27 of the CPC provides 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.”

11. From the plain reading of this provision, it is apparent that the additional evidence could be allowed if the



Appellate Court requires any document to be produced to enable it to pronounce judgment or for any other substantial cause. The Hon'ble Supreme Court in the case of **Sanjay Kumar Singh Vs. The State of Jharkhand**, reported in **(2022) 7 SCC 247** has held that where the documents are necessary for determination of mere controversy between the parties, the same would be allowed to bring on record as additional evidence subject to all just exceptions. The issue of delay or due diligence can always be subservient to the cause of substantial justice. It would be relevant to quote paragraphs 7 to 11, which read as under :

“7. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the 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 suit and interest of justice



clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

8. As observed and held by this Court in A. Andisamy Chettiar v. A. Subburaj Chettiar [A. Andisamy Chettiar v. A. Subburaj Chettiar, (2015) 17 SCC 713 : (2017) 5 SCC (Civ) 514] , 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. It is further observed that 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.

9. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, we are of the opinion that while



considering the application for additional evidence, the High Court has not at all adverted to the aforesaid relevant consideration i.e. whether the additional evidence sought to be adduced would have a direct bearing on pronouncing the judgment or for any other substantial cause. As observed hereinabove, except sale deed 29-12-1987, which as such was rejected, there was no other material available on record to arrive at a fair market value of the acquired land. Therefore, in the facts and circumstances of the case, the High Court ought to have allowed the application for additional evidence. However, at the same time, even after permitting to adduce the additional evidence, the applicant has to prove the existence, authenticity and genuineness of the documents including contents thereof, in accordance with law and for the aforesaid purpose, the matter is to be remanded to the Reference Court.

10. *In view of the above discussion and for the reasons stated above, the present appeal is partly allowed. Order passed by the High Court rejecting IA No. 1384 of 2019 for adducing additional evidence to bring on record the documents mentioned in the said application is hereby quashed and set aside. IA No. 1384 of 2019 filed before the High Court for adducing additional evidence under Order 41 Rule 27CPC is hereby allowed. The appellant herein is*



permitted to bring on record the documents mentioned in IA No. 1384 of 2019 as additional evidence.

11. However, as observed and held by this Court in Uttaradi Mutt v. Raghavendra Swamy Mutt [Uttaradi Mutt v. Raghavendra Swamy Mutt, (2018) 10 SCC 484 : (2019) 1 SCC (Civ) 29] , allowing the application filed under Order 41 Rule 27CPC does not lead to the result that the additional documents/additional evidence can be straightway exhibited rather, the applicant would have to not only prove the existence, authenticity and genuineness of the said documents but also the contents thereof, in accordance with law. It is observed that thus the documents which are permitted to be brought on record as additional evidence have to be proved by the appellant before the Reference Court, in accordance with law and only thereafter and after proving the existence, authenticity and genuineness of the said documents including contents thereof, the same can be taken into consideration by the Reference Court”.

12. Further, it appears that the documents may help the learned first appellate court to arrive at just and proper finding in order to further the substantial cause of justice. The Hon’ble Supreme Court in the case of **Billa Jagan Mohan Reddy vs. Billa Sanjeeva Reddy**, reported in **(1994) 4 SCC 659**



has observed that it is settled law that, if the documents are found to be relevant to decide the real issue in the controversy, and when the court felt that the interest of justice requires, that the documents may be received, exercising the power under Order 41 Rule 27 CPC the appellate court would receive the documents and consider their effect thereof.

13. In the present case, as has already been observed that documents were supposedly not required to be brought on record at the stage of trial and further prayer has been made to the learned Appellate Court to call for the documents from the court concerned, which was refused, the petitioners/appellants could not be faulted for bringing the documents so late on record.

14. In view of the aforesaid facts and circumstances and discussions made here-in-before, I am of the opinion that the learned first appellate court failed to exercise the jurisdiction vested in it and, for this reason, I do not think the impugned order dated 09.11.2016 passed in Title Appeal No.01/2010, arising out of Title Suit No.26 of 2004, could be sustained and, hence, the same is set aside. Consequently, the application dated 17.08.2016 filed on behalf of the appellants/petitioners under Order 41 Rule 27 CPC is allowed. The petitioners are permitted



to bring on record the documents mentioned in the petition dated 17.08.2016 as additional evidence.

At this point of time, it would be relevant to point out that allowing the petition filed by the petitioners/appellants under Order 41 Rule 27 CPC does not mean the additional documents/additional evidence can be straightway exhibited rather, the petitioners/appellants would have to prove the existence, authenticity and genuineness of the said documents and also the contents thereof, as may be required by law, as has been observed and held by the Hon'ble Supreme Court in the case of *Uttaradi Mutt v. Raghavendra Swamy Mutt*, reported in *(2018) 10 SCC 484*.

15. Accordingly, the instant petition stands allowed.

16. Since the appeal is pending before the learned first appellate court since the year 2010, the learned first appellate court is directed to dispose of the appeal pending before it within three months from the date of receipt/production of a copy of this judgment.

17. However, it is made clear that this Court has not expressed anything on merits of the case of the respective parties as well as documents permitted to be brought on record as exhibits and it would be for the learned appellate court to deal



with the same in accordance with law and on its own merits, but after giving ample opportunity to the respondents/defendants to rebut/controvert the documents sought to be brought on record, if they so desire.

(Arun Kumar Jha, J)

Amrendra/-

AFR/NAFR	AFR
CAV DATE	N/A
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