

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.751 of 2022

1. Rakesh Kumar Singh @ Rakesh Kumar @ Rakesh Singh Son of Late Lalita Singh, Resident of Village and P.O. Jamurana, P.S. Ramgarh, District - Kaimur (Bhabua).
2. Piyush Singh @ Prince Singh Son of Late Lalita Singh, Resident of Village and P.O. Jamurana, P.S. Ramgarh, District - Kaimur (Bhabua).
3. Shweta Singh, Wife of Late Raushan Singh, Resident of Village and P.O. Jamurana, P.S. Ramgarh, District - Kaimur (Bhabua).
4. Arush Singh (Minor), Son of Late Raushan Singh and under guardianship of his mother and natural Guardian namely Shweta Singh. Resident of Village and P.O. Jamurana, P.S. Ramgarh, District - Kaimur (Bhabua).

... .. Petitioners

Versus

1. Ajay Kumar Singh Son of Late Barelal Singh, Resident of village and P.O.- Jamurana, P.S. Ramgarh, District- Kaimur (Bhabua).
2. Abhay Kumar Singh Son of Late Barelal Singh, Resident of village and P.O.- Jamurana, P.S. Ramgarh, District- Kaimur (Bhabua).
3. Neeraj Kumar Singh, Son of Late Barelal Singh, Resident of village and P.O.- Jamurana, P.S. Ramgarh, District- Kaimur (Bhabua).
4. Shaila Devi, Widow of Late Barelal Singh, Resident of village and P.O.- Jamurana, P.S. Ramgarh, District- Kaimur (Bhabua).
5. Kundan Singh, Son of Late Chhotelal Singh, Resident of village and P.O.- Jamurana, P.S. Ramgarh, District- Kaimur (Bhabua).

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Garg, Advocate Mr. Sanjiv Kumar Pathak, Advocate
For the Respondent/s	:	Mr. Rajani Kant Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 18-10-2024

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

02. The petitioners are aggrieved by the order dated 01.08.2022 passed by the learned Additional District Judge-XI,



Kaimur at Bhabhua in Title Appeal no. 67 of 2016, whereby and whereunder the petition dated 26.07.2017 filed by the petitioners under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') for admitting additional evidence has been rejected.

03. Learned counsel for the petitioners, at the outset, submits that the application filed by the petitioners for bringing on record additional evidence has been rejected at the initial stage of the appeal whereas this Court in the case of *Mossamat Chintamani Devi & Ors. vs. Lalan Chaubey and Anr. (Civil Miscellaneous Jurisdiction No. 35 of 2022)* decided on 25.07.2024, relying on the decision of Hon'ble Supreme Court in the case of *Union of India vs. Ibrahim Uddin & Anr.*, reported in *2013 (1) PLJR (SC) 48*, allowed the petition holding that the application for taking additional evidence at an appellate stage, even if filed during the pendency of the appeal, is to be heard 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. Learned counsel further submits that the documents are necessary for adjudication of real issue by the court and would help the appellate court in pronouncing the judgment.



04. On the other hand, learned counsel for the respondents submits that the documents sought to be brought on record are not at all relevant and there is no infirmity in the impugned order and hence, the same needs to be sustained.

05. In the aforesaid facts and circumstances, without going into the merits of the case of the respective parties, I find that the impugned order is unsustainable on the point that the application filed for taking additional evidence was supposed to be taken up for hearing and dispose of at the stage of final hearing of the appeal. But it appears the same was not done in the present case. The impugned order has been passed rejecting the application dated 26.07.2024 filed by the petitioners under Order 41 Rule 27 of the Code prior to the stage of final hearing of the appeal and this runs counter to the decision of Hon'ble Supreme Court in the case of *Union of India vs. Ibrahim Uddin & Anr.* (supra). On this limited point, the impugned order dated 01.08.2022 passed by the learned Additional District Judge-XI, Kaimur at Bhabhua in Title Appeal no. 67 of 2016 is set aside and the matter is remitted back to the learned first appellate court with direction to pass orders afresh on the petition dated 26.07.2017 of the petitioners in the light of decisions of Hon'ble Supreme Court in the case of *Union of*



India vs. Ibrahim Uddin & Anr. (supra).

06. With the aforesaid observation, the present petition stands allowed.

07. Since the title appeal is of the year 2016, the learned first appellate court is directed to take steps for disposal of the petition of the petitioners dated 26.07.2017 at the earliest and preferably within a month from the date of receipt/production of a copy of this order.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21-10-2024
Transmission Date	NA

