

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1112 of 2023

1. Birbal Yadav Son of Janki Mahto, Resident of Village- Chakai Tola Jamua, P.S.- Chakai, Dist.- Jamui.
2. Pokhan Mahto, Son of Tejo Mahto, Resident of Village- Chakai Tola Jamua, P.S.- Chakai, Dist.- Jamui.

... .. Petitioners

Versus

1. Umesh Yadav Son of Doman Mahto, Resident of Village- Chakai Tola Jamua, P.S.- Chakai, Dist.- Jamui.
2. Bindu Yadav, Son of Doman Mahto, Resident of Village- Chakai Tola Jamua, P.S.- Chakai, Dist.- Jamui.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan Singh, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 13-08-2024

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

02. The instant petition has been filed under Article 227 of the Constitution of India by the petitioners for quashing the order dated 11.09.2023 passed in Title Appeal No. 01 of 2020 by the learned Additional District Judge-II, Jamui whereby and whereunder the application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') filed by the petitioners for bringing additional evidence on record has been rejected.



03. Shorn of unnecessary details, the facts of the case are that the petitioners were plaintiffs before the learned trial court and their ancestors had filed Title Suit No. 02 of 2012, which was dismissed and decreed against the petitioners. Aggrieved by the dismissal of title suit, an appeal was preferred by the petitioners. During pendency of the appeal, petitioners filed an application for amendment which was allowed vide order dated 22.10.2022 at the cost of Rs. 10,000/-. By way of the said amendment, paragraph-3 of the plaint was amended and the fact of sale of 1.76 $\frac{1}{4}$ acre land made through different sale deeds by the father of the defendant/respondent, namely Doman Mahto, was added. Further amendment was made that after sale deed of the plaintiffs, on 19.08.1993, the co-sharer of Doman Mahto, namely Bhatoo Mahto, sold 1.45 acre land of his share to Jaleshwar Yadav and Bhim Yadav which created cloud over the title of the plaintiffs. Thereafter, the petitioners filed an application under Order 41 rule 27 read with Section 151 of the Code for bringing on record true copy of the sale deeds dated 12.09.1983 and 02.09.1987 as additional evidence. However, learned Additional District Judge-II, Jamui vide the impugned order dated 11.09.2023 rejected the petition dated 06.06.2023 filed under Order 41 Rule 27 r/w Section 151 of the Code.



04. Learned counsel for the petitioners submits that the impugned order is not sustainable as it is well settled principle of law that a pleading without evidence has no value in the eyes of law and, as such, if the amendment of pleading has been allowed on payment of heavy cost of Rs. 10,000/-, the corresponding documents in support of those amended pleadings ought to have been allowed. It was simply the prayer of the petitioners to bring on record corresponding sale deeds for an area of 1.76 $\frac{1}{4}$ acre land and since amendment has already been allowed and not allowing the documents to be exhibited in terms of the amendment would make the amendments fruitless. Once the amendments have been allowed, the petitioners are entitled to support their pleadings with the relevant documents and if the documents are not allowed to be brought on record that would mean making the amendments ineffective. Thus, the learned counsel submits that the impugned order is without merit and the same needs to be set aside.

05. Perused the record.

06. On perusal of the impugned order, I find that the petitioners filed a similar application earlier before court of learned District Judge, Jamui on 25.05.2023 with same prayer for taking the sale deeds dated 12.09.1983 and 02.09.1987 on



record as additional evidence and the said petition was rejected by the learned District Judge, Jamui vide order dated 20.06.2022 holding that the said documents were not at all essential for the just decision of the appeal. The said order was not challenged by the petitioners and thus, the same attained finality. Now, the petitioners, in a contrived manner, want to circumvent the said order and approached the court with prayer for making amendment in the plaint and were successful in getting a favourable order for amendment in the plaint. However, making the amendment in the plaint and taking additional evidence under Order 41 Rule 27 of the Code are two entirely different matters and the considerations for the same are also different. The principles underlying the provisions of Order 41 Rule 27 has been made clear in a number of decisions by the Hon'ble Supreme Court and the principle is whether the court concerned thinks it proper and feels a need for additional evidence to arrive at a just and proper decision, then only additional evidence is to be allowed. It has nothing to do with the amendment of the pleadings or the understanding of the case by the petitioners.

07. It would be apposite to consider the provisions on the point. Order 41 Rule 27 of the Code reads thus:

“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.”

08. From bare reading of the provision, it could be seen that it is not a case of the petitioners that the learned trial court has refused to admit the documents which was sought to be brought on record at the appellate stage. Furthermore, the documents were all along in the public domain and if the petitioners were diligent, they could have brought these documents at the very beginning before the learned trial court. The petitioners sought to bring on record the documents only at the appellate stage. In these circumstances, natural inference is



that the documents have been brought only to fill the lacunae in the case of the petitioners.

09. The Hon'ble Supreme Court in the case of **A. Andisamy Chettiar v. 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 fulfillment 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.”

The aforesaid decision in the case of **A. Andisamy Chettiar** (supra), stipulates that it is against the spirit of the Code to allow a party to adduce additional evidence without fulfillment of either of the three conditions mentioned in Rule 27 of Order 41 of the Code. Reference could also be made to the case of **K.R. Mohan Reddy v. Net Work Inc.**, reported in



(2007) 14 SCC 257 wherein the Hon'ble Supreme Court in paragraph 19 held as under :

“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.”

10. Further, in the case of **Sanjay Kumar Singh Vs. State of Jharkhand**, reported in **(2022) 7 SCC 247**, the Hon'ble Supreme Court has held that as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The Supreme Court further held that 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 material before it without taking into consideration the additional evidence sought to be adduced.



11. Moreover, the amendment brought on record by the petitioners reads as under:

“In *Khata* No. 54, *Khesra* No. 821 having area 2.90 acre, prior to sale deed of the plaintiffs, Doman Mahto sold 1.76 and $\frac{1}{4}$ acre of land by different sale deeds and even after the sale deed of the plaintiffs, the co-sharer of Doman Mahto, namely Bhatoo Mahto, sold out his half share of 1.45 acre land vide sale deed dated 19.08.1993 in favour of Jaleshwar Yadav and Bhim Yadav, casting aspersion on the sale deed of the petitioners.”

12. From the perusal of the amendment, what has cast aspersion on the sale of petitioners are not the sale deeds dated 12.09.1983 and 02.09.1987 rather it is the specific averment of the petitioners that it is the sale deed dated 19.08.1993. On this account as well, the document sought to be brought on record as additional evidence could not be allowed. Moreover, considering the principle laid down by the Hon'ble Supreme Court that 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 material before it without taking into consideration the additional evidence sought to be adduced, I do not find the impugned order suffers from any infirmity as the same has been passed after due consideration and, therefore, the same is affirmed.

13. Hence, I do not find any merit in the instant petition and, accordingly, the same is dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20-08-2024
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