

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1691 of 2018

- 1.1. Anil Kumar, Son of Late Suresh Prasad, Resident of Nabiganj Surain, Eastern Sarain alias Tehta, P.S. Makhdumpur, P.O. Tehta, District Jehanabad, Pin - 804427.
- 1.2. Maya Devi, Daughter of Late Suresh Prasad, Wife of Anil Prasad, resident of mohalla and P.S. Belaganj, District Gaya.
- 1.3. Baby Devi, Daughter of Late Suresh Prasad, wife of Dharampal Prasad, resident of mohalla Mashaurhi Main Road, P.S. Mashaurhi, Dist. Patna.
- 1.4. Mala Kumari, Daughter of Late Suresh Prasad, resident of Nabiganj Surain, Eastern Sarain alias Tehta, P.S. Makhdumpur, P.O. Tehta, District - Jehanabad, Pin - 804427.
2. Sushila Devi W/o Suresh Prasad Both are Resident of Nabiganj Surain, Eastern Sarain alias Tehta, P.S. Makhdumpur, P.O. Tehta, District- Jehanabad.

... .. Petitioner/s

Versus

1. Jahan Aara Khatoon W/o Late Nishar Ahmad, Resident of Nabiganj Surain, Eastern Sarain alias Tehta, P.S. Makhdumpur, P.O. Tehta, District Jehanabad.
2. Md Ansar@ Shazada S/o late Nishar Ahmad
3. Md. Anwar@ Laddu S/o late Nishar Ahmad
4. Juli Khatoon W/o Iftekhar
5. Nazia Pravev@ Golu Khatoon W/o Md. Shabeen @ Munna
6. Md Naushad Ahmad S/o late Md. Nezaumddin All are residents of Village Nabiganj Surain, Eastern Sarain alias Tehta, P.S. Makhdumpur, P.S. Tehta, District- Jehanabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ray Saurabh Nath, Advocate Mr. Manjari Nath, Advocate Mrs. Shalini Sinha, Advocate
For the Respondent/s	:	Mr. Raghib Ahsen, Sr. Advocate Mr.Wasi Akhtar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 11-01-2024

The present petition has been filed by the petitioners for setting aside the order dated 04.09.2018 passed by the learned Fast Track Court-II, Jehanabad in Title Appeal



No.02/2016/02/2017 rejecting the petition dated 13.04.2018 filed by the appellants/petitioners under Order 41 Rule 27 of the Code of Civil Procedure (hereinafter referred to as the 'CPC') for bringing certain documents on record as exhibits with other reliefs.

2. Briefly stated, the case of the petitioners is that they are plaintiffs before the learned trial court and they filed Title Suit No. 09 of 2005 against the defendants/respondents for declaration and confirmation of possession over 5 decimals land situated at Plot No.5209/3658 under Khata No.34/575 at village-Nabiganj Saran @ Tehta, P.S.-Makhdumpur, District-Jehanabad.

3. According to the plaintiffs, one Sukan Ram, the grandfather of the plaintiff no.1 had purchased 4 decimals land out of Plot No.3658 on 20.01.1929 from Ram Chandra Ram and Lakshmi Ram, both sons of Hiranman Ram. After purchase, the grandfather of the petitioner came in possession over the suit land and after his demise, his son and, thereafter, his grandson (the plaintiff) came into possession. Further, on 28.09.1935, the said Sukan Ram had purchased 1 Katha 1 Dhoor of land out of Plot No.3658 and came into its possession. Thereafter, on 29.05.1950, a sale deed was executed by one Nand Lal Ram, maternal grandfather of one Ayodhya Prasad, in favour of



Ramun Devi, wife of Ayodhya Prasad for an area measuring 7 ½ decimals of land in Plot No. 3658. Further case of the plaintiffs is that on 30.10.1986, the said Ayodhya Prasad sold 1 & ½ decimals of land from Plot No. 3658 (Old)/5209 (New) to the original petitioner no.1 (plaintiff no.1), who gifted the said property to his wife (petitioner no.2) and she has been coming in possession over it since the date of gift. Thereafter, on 27.01.2000, the petitioner no.2 purchased 5 decimals of land from Plot No.3658 (Old)/5209 (New) and, thus, the petitioner no.2/plaintiff no.2 held title and possession over 6 ½ decimals of land and the original petitioner no.1 became entitle for 8 decimals of land since 4 decimals was transferred vide sale deed dated 20.01.2029 and 1 Katha 1 Dhoor vide sale deed dated 28.09.1935. Thus, total area of both the plaintiff nos. 1 and 2 (petitioner nos. 1 & 2) has become 8 decimals+6 ½ decimals=14 ½ decimals.

4. The defendants/respondents appeared in the learned court below and contested the suit by filing written statement. During the pendency of the suit, the plaintiffs filed a petition dated 13.12.2012 for taking in evidence and marking as exhibits the certified copies of the original sale deeds dated 21.01.1929 and 28.09.1935/19.10.1935. Further, on 13.12.2012, the



plaintiffs filed a petition under Section 74 of the Indian Evidence Act, 1872 for taking documentary evidence and marking as exhibits the cadestral survey khatiyam. Thereafter, the plaintiffs filed one more petition dated 13.12.2012 for bringing on record the original copy of sale deed dated 27.01.2000 and made a prayer before the learned Sub-Judge-IV, Jehanabad to allow him to file original copy of the deed and to return the certified copy. On the same day, i.e., 13.12.2012, the plaintiffs filed a petition to allow the plaintiffs/petitioners to prove the custody of the sale deeds executed by Nand Lal Ram and Ram Chandra Ram in favour of Sukan Ram, submitting that two sale deeds have been filed in the learned court from the custody of the plaintiff no.1/original petitioner no.1. Then, the plaintiffs again filed a petition dated 06.02.2015 for recall of the order dated 04.09.2014 whereby the evidence of the plaintiffs/petitioners was closed without marking the sale deeds executed by Nand Lal Ram and Ram Chandra Ram as exhibits.

5. Further case of the plaintiffs/petitioners is that without appreciating the aforesaid petitions filed on behalf of the plaintiffs/petitioners, the learned Sub-Judge-III, Jehanabad dismissed the Title Suit No.09/2005 on 02.11.2015 although the learned court below also recorded some findings on the



registered sale deed dated 29.05.1950.

6. Aggrieved by the aforesaid judgment dated 02.11.2015 passed in Title Suit No.09/2005, the plaintiffs/petitioners filed appeal before the learned District Judge, Jehanabad which was registered as Title Appeal No. 02 of 2016.

7. Since the learned appellate court failed to mark vital documents as exhibits, the appellants/petitioners filed an application under Order 41 Rule 27 CPC before the learned first appellate court for marking the certified copy of C.S and R.S. Khatiyani as exhibits and in the said application, it was also submitted that the plaintiffs/petitioners filed an application dated 13.04.2018 for marking three registered sale deeds of the years 1929, 1935 and 1950 as exhibits which were more than 30 years old documents and were produced before the learned Sub-Judge-III, Jehanabad, but the said documents were not marked as exhibits. The respondents objected to the said application by filing a reply on 21.04.2018. However, learned appellate court rejected the application dated 13.04.2018 by the impugned order.

8. The learned counsel appearing on behalf of the appellants/petitioners submitted that the order of the learned



first appellate court is wrong and incorrect in view of the facts on record. The learned first appellate court did not consider the specific provision of Order 41 Rule 27 of the CPC since it provides that the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted and also that if 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 was bound to allow such evidence or document to be brought on record. The learned counsel further submitted that the learned appellate court has given wrong finding that the appellants/plaintiffs never took any step before the learned lower court to adduce the documents in evidence and has incorrectly recorded that the appellants/plaintiffs wrongly pleaded in the petition that steps have been taken for the same. The learned counsel further submitted that the petitioners have brought on record copy of the applications dated 13.12.2012 and 06.02.2015 which shows that the learned trial court did not consider these applications and the petitioners/plaintiffs were not at fault. The pleadings contained the recital of the sale deeds sought to be brought on record by the plaintiffs. Further, while dismissing the title suit, the learned



court below recorded its finding on registered sale deed dated 29.05.1950. This fact was not taken into consideration by the learned first appellate court. Moreover, the plaintiffs filed the application for marking the registered deeds of sale as exhibits which were more than 30 years old and were produced from the custody of the plaintiffs/petitioners. The C.S. Khatiya and R.S. Khatiyan are public documents and are quite relevant since these Khatiyans show that the vendors were having title over the land in dispute. The learned first appellate court also failed to take into consideration the fact that marking the aforesaid documents as exhibits would not raise a new point in the appellate court since all these documents are quite relevant for the purpose of decision of the case before the learned appellate court. Further, the learned trial court wrongly ignored to mark the documents as exhibits which were sought to be exhibited at the appellate stage. The learned first appellate court also failed to appreciate that the documents sought to be exhibited were for substantial cause to enable it to adjudicate the case and pronounce the judgment. The learned counsel relied on the decision of the Hon'ble Supreme Court in the case of *Bipin Shantilal Panchal vs. State of Gujarat and Ors.*, reported in *AIR 2001 SC 1158* wherein it has been held that the court



should take the documents on record and tentatively mark them as exhibits and in case of objection, the objection could be decided at the last stage in the final judgment. The learned counsel further relied on the decision of the Hon'ble Supreme Court in the case of ***Sanjay Kumar Singh vs. The State of Jharkhand***, reported in **(2022) 7 SCC247** wherein it has been held in paragraphs 7 to 11 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”.

9. Countering the submission made on behalf of the petitioners, the learned senior counsel appearing on behalf of the respondents/defendants expressed doubt over manner of filing of the petitions before the learned trial court by the plaintiffs/petitioners for taking on record the sale deeds and Khatiyan and marking them as exhibits. The learned counsel further submitted that the plaintiffs/petitioners did not move their application before the learned trial court. Neither did the plaintiffs prove the custody of the documents namely, sale deeds. Further, there was no refusal by the learned trial court so as to allow by the first appellate court to take on record the additional evidence on the petition of the plaintiffs/appellants. The learned counsel further submitted that the petitioners have filed an application before the learned trial court for production of additional evidence only in order to fill up the lacunae and have failed to show that notwithstanding the exercise of due diligence, the petitioners could not have produced the documents at an earlier stage. Thus, the learned counsel



submitted that the learned first appellate court passed a just and reasonable order and the order does not require any interference by this Court.

10. Having perused the record and considering the submission made on behalf of the parties, I am of the view that the petition of the petitioners must succeed. From perusal of the record, it is evident that the petitioners as plaintiffs filed application for bringing on record the sale deeds of the years 1929, 1935 and 1950 as well as Khatiyani of cadastral survey and revisional survey and marking these documents as exhibits. Copy of order sheet of learned trial court shows certain applications were filed on 06.02.2015 and 13.12.2012 as claimed by the petitioners. Further, the claim of the petitioners is supported by Annexure P 2, P 3, P 4, P 5, P 6, P 13 to P 17. Further, it is evident from the copy of the plaint (Annexure-P1) that the aforesaid sale deeds find mention in the pleadings. The learned trial court has also discussed these documents in its finding.

11. Consideration of the aforesaid facts makes it clear that the learned first appellate court recorded a wrong finding when it observed that the plaintiffs did not take any step for bringing the documents on record and marking them as exhibits.



Further, the learned first appellate court ought to have considered the specific provisions of Order 41 Rule 27 of the CPC which 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) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission”.



12. Obviously, the documents sought to be brought on record and marked as exhibits by the petitioners/plaintiffs would come in the category of documents/additional evidence which was refused by the learned trial court though not specifically but by implication.

13. Further, it also 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.

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 04.09.2018 passed in Title Appeal No.02/2016/02/2017 could be sustained and, hence, the same is



set aside. Consequently, the application dated 13.04.2018 filed on behalf of the appellants/plaintiffs/petitioners under Order 41 Rule 27 CPC is allowed. The petitioners are permitted to bring on record the documents mentioned in the petition dated 13.04.2018 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 2017, the learned first appellate court is directed to dispose of the appeal pending before it within six 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)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	19.12.2023
Uploading Date	11.01.2024
Transmission Date	N.A.

