

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.375 of 2024

Rakesh Kumar Son of Late Nandlal Prasad, Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).

... .. Petitioner/s

Versus

1. Shyam Pati Devi Wife of Ayodhya Prasad, Resident of Village- Sigsigi, P.S.- Bishrampur, District- Palamu (Jharkhand), at present Resident of Village-Amba, P.S.- Amba, District-Aurangabad (Bihar).
2. Abhimanyu Kumar, son of Late Nandlal Prasad, Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
3. Shankar Kumar, son of Late Nandlal Prasad, Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
4. Suman Saurabh son of Late Nandlal Prasad, Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
5. Raj Kumar Sao, son of Late Mohan Sao, Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
6. Arun Kumar, son of Late Mohan Sao, Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
7. Sunil Kumar son of Late Mohan Sao, Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
8. Sangita Devi, Daughter of Late Mohan Sao, Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
9. Pinki Devi, Daughter of Late Mohan Sao, Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
10. Ram Baran Singh, son of Bindeshwar Singh, resident of Village-Bedauli, P.S.-Kutumba, District-Aurangabad (Bihar), at present Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
11. Brihaspat Singh, son of Ram Baran Singh, resident of Village-Bedauli, P.S.-Kutumba, District-Aurangabad (Bihar), at present Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
12. Kishundeo Singh, son of Ram Baan Singh, resident of Village-Bedauli, P.S.-Kutumba, District-Aurangabad (Bihar), at present Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
13. Arjun Singh, son of Ram Baran Singh, resident of Village-Bedauli, P.S.-Kutumba, District-Aurangabad (Bihar), at present Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
14. Ajay Singh, son of Ram Baran Singh, resident of Village-Bedauli, P.S.-Kutumba, District-Aurangabad (Bihar), at present Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
15. Surendra Singh, son of Ram Baran Singh, resident of Village-Bedauli, P.S.-Kutumba, District-Aurangabad (Bihar), at present Resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).



16. Bijay Kumar, son of Narayan Prasad, Resident of Village-Nabinagar, P.O. and P.S.-Nabinagar, District-Aurangabad (Bihar).
17. Ram Naresh Singh, son of Late Deobansh Singh, resident of Village-Badawan, P.S.-Kutumba, District-Aurangabad (Bihar).
18. Ram Nagina Singh, son of Late Deobansh Singh, resident of Village-Badawan, P.S.-Kutumba, District-Aurangabad (Bihar).
19. Muni Devi, Wife of Shankar Singh, resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).
20. Ramrati Devi, wife of Late Goverdhan Bhagat, resident of Village-Amba, P.O. and P.S.-Amba, District-Aurangabad (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Abhishek, Advocate
For the Respondent/s : Mr.Dhirendra Narain Mallik, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

Date : 24-04-2025

Heard learned counsel for the petitioner as well as learned counsel for the respondents.

2. The petitioner is aggrieved by the order dated 30.01.2024 passed by learned Additional District Judge-X, Aurangabad in Title Appeal No. 67 of 2001/49 of 2022 whereby and whereunder prayer of the appellant/respondent no.1 for taking certain documents as additional evidence under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure (for short 'the Code') has been allowed.

3. Brief facts of the case are that the respondent no.1 is the appellant who was plaintiff before the learned trial court and the petitioner is the respondent and was defendant before the learned trial court. The plaintiff/ appellant/respondent no.1



filed Title Suit No. 195 of 1993 against the petitioner and other defendants seeking relief for partition of half share of the property recorded in Khata No. 17, Plot Nos. 513 and 514 bearing area 2 katha and 1/3rd share in the property recorded under Khata Nos. 19 and 65, Plot No. 134 area 26.5 decimals and Plot No. 472 area 16.05 decimals. The suit was contested by the father of the petitioner who appeared and filed his written statement. Other defendants also appeared and contested the claim of the plaintiff. The suit was partially decreed and plaintiff filed Title Appeal No. 67 of 2001 in which on 22.05.2023, the plaintiff/appellant filed a petition under Order 41 Rule 27 of the Code with a prayer that judgment and decree passed in Title Suit No. 238 of 2002 dated 25.10.2011 was an essential piece of evidence as the same related to the land with respect to Khata No. 19, Plot No. 134 and the same may be exhibited. A rejoinder was filed by the petitioner who objected to the claim of the plaintiff on the ground that the statement made in the said petition is not correct and the stage of appeal does not permit him to make such a prayer. The learned appellate court without considering the legal as well as factual aspects of the matter allowed the prayer of the appellant on 30.01.2024 and the said order is under challenge before this Court.



4. Learned counsel for the petitioner submits that the learned trial court did not consider the objection raised by the petitioner and passed a non-speaking order. The learned 1st appellate court has failed to consider that the three essential ingredients of Order 41 Rule 27 of the Code are not present. The respondent no.1 did not show any due diligence why the document could not be filed earlier or that the learned trial court refused to take the document on record. The respondent no.1 further failed to show that in absence of the additional evidence, the court would not be able to pronounce the judgment. The learned 1st appellate court has failed to furnish reason about necessity of the proposed additional evidence and how the court was unable to pronounce the judgment in absence of the said document, more so, when the document came into existence during pendency of the title appeal. Learned counsel further submits that moreover the judgment which is being sought to be brought on record as an additional evidence is under challenge before this Court in First Appeal No. 8 of 2012. The evidentiary value of the said document would go if the appeal is allowed against the said judgment and decree of the appellate court. Learned counsel further submits that moreover the application filed under Order 41 Rule 27 read with Section 151 of the Code



was taken for hearing and orders were passed before the appeal was put up for final hearing and the same runs contrary to the decision of the Hon'ble Supreme Court in the case of ***Union Of India vs Ibrahim Uddin & Anr.***, reported in ***(2012) 8 SCC 148***. The learned counsel submits that the main point of consideration before allowing the additional evidence is whether the same is found to be necessary by the court to enable it to pronounce the judgment on all issues before it. Thus, the learned counsel submits that the impugned order could not be sustained and the same needs to be set aside.

5. Learned counsel appearing on behalf of the respondents vehemently contends that there is no infirmity in the impugned order and the same is sustainable. Learned counsel further submits that the documents which were sought to be brought on record are public documents and are necessary for proper disposal of the appeal before the learned 1st appellate court. The said document relates to the suit property and establishes the claim of the respondent no.1 over whole of the suit property. Learned 1st appellate court took into consideration this fact and thereafter passed the order. Learned counsel refers to the decision of the Hon'ble Supreme Court in the case of ***Union of India vs. K.V. Lakshman & Ors.***, reported in ***2016***



(13) SCC 124 wherein in paragraph no. 37, the Hon'ble Supreme Court held as under:-

“(37) Order 41 Rule 27 of the Code is a provision which enables the party to file additional evidence at the first and second appellate stage. If the party to appeal is able to satisfy the appellate Court that there is justifiable reason for not filing such evidence at the trial stage and that the additional evidence is relevant and material for deciding the rights of the parties which are the subject matter of the lis, the Court should allow the party to file such additional evidence. After all, the Court has to do substantial justice to the parties. Merely because the Court allowed one party to file additional evidence in appeal would not by itself mean that the Court has also decided the entire case in his favour and accepted such evidence. Indeed once the additional evidence is allowed to be taken on record, the appellate Court is under obligation to give opportunity to the other side to file additional evidence by way of rebuttal.”

Learned counsel further submits that in order to do substantial justice, the courts are bound to consider whether the additional evidence is going to help the cause of the justice and such evidence ought to be allowed to be taken as additional evidence.

6. I have given my thoughtful consideration to the rival submission of the parties. The short issue before this Court is whether the learned trial court was correct in allowing the application filed under Order 41 Rule 27 of the Code in favour of respondent no.1. Order 41 Rule 27 of the Code 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.”

7. The Hon'ble Supreme Court in the case of ***Union Of India vs Ibrahim Uddin & Anr.*** (supra) has held that “an application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. 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 materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court.”

8. However, in the case at hand, bare perusal of the impugned order shows the learned trial court has abdicated its responsibility as to whether the conditions prescribed in taking of additional evidence has been fulfilled or not? Further there is no consideration about the document being sought on record as additional evidence being necessary for the 1st appellate court to enable it to pronounce the judgment. Thereafter, the application filed for taking additional evidence was disposed of at the initial stage of the appeal whereas in the clear mandate of the Hon’ble Supreme Court in the case of ***Union Of India vs Ibrahim Uddin & Anr.*** (supra), the same should have been taken up for hearing and disposal at the time of final hearing of the appeal. As rightly



pointed out by the learned Single Judge of this Court in the case of *Hazar Choudhary vs. Arun Kumar Pandey & Ors.*, reported in *2017 (1) PLJR 791* that there is no universal law that application of such nature could not be taken up at the initial stage but there is no universal law either that it must be decided prior to the hearing of the appeal.

9. Therefore, the impugned order dated 30.01.2024 passed by learned Additional District Judge-X, Aurangabad in Title Appeal No. 67 of 2001/49 of 2022 suffers from a number of infirmities and the said order could not be sustained and, hence, the same is set aside. The matter is remanded to the learned 1st appellate court for passing a speaking order after giving due opportunity of hearing to the parties.

10. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.04.2025
Transmission Date	NA

