

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.436 of 2024

Hridayanand Pathak @ Hridaya Nand Pathak Son of Late Ram Kripal Pathak
Resident of Village- Itarhi, Police Station- Itarhi, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Buxar.
2. Anchal Adhikari, Anchal- Itarhi, Buxar.
3. Mukhiya Gram Panchayat, Itarhi, at and P.O. and P.S. and Anchal- Itarhi, Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rahul Nath, Advocate
		Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Government Pleader 5

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 24-06-2025

Heard the learned counsel for the petitioner as well as
learned counsel appearing on behalf of respondent no. 1.

02. The petitioner is aggrieved by the order dated 14.11.2022 passed by the learned Additional District Judge-IX, Buxar in Title Appeal No. 07 of 2003 whereby and whereunder the petition of the petitioner filed under Order 41 Rule 27 of the Code of Civil Procedure (for short ‘the Code’) has been rejected and by the subsequent order dated 05.03.2024 passed by the same court, application filed by the petitioner for review of the order dated 14.11.2022 has also been dismissed.

03. Learned counsel for the petitioner submits that the petitioner was plaintiff before the learned trial court and is



appellant in the first appellate court. The father of the plaintiff/petitioner filed a suit for declaration of title and possession over the suit land after the said land was declared as '*Anabad Sarva Sadharan*'. The suit was decreed against the plaintiff/petitioner and during the stage of appeal, father of the petitioner, who was the original plaintiff and the original appellant died. The petitioner, who was substituted in place of his father as appellant, filed an application with an acknowledgment receipt issued by the *Maharaja of Dumraon Raj* in favour of the original plaintiff of *fasli* year 1347 for taking the same on record. The petitioner claimed that the said acknowledgment receipt was not available earlier and it was misplaced and during pendency of the appeal, the said receipt was found in a box. The learned first appellate court, vide order dated 14.11.2022, dismissed the application filed by the petitioner under Order 41 Rule 27 of the Code, on the ground that the acknowledgment receipt was said to be of year 1885 and was issued in favour of the original appellant, Ram Kripal Pathak, but from bare perusal of the same, it appears to be a new document and it is never looked like a document of the year 1885. Only on this ground, the application filed under Order 41 Rule 27 of the Code was dismissed. Thereafter, an application



for review under Order 47 r/w Section 114 r/w 151 of the Code was filed by petitioner. The said application was also rejected. Both the orders are under challenge before this Court.

04. Learned counsel further submits that the impugned orders are not sustainable as the learned first appellate court did not take into consideration the fact that acknowledgment receipt was misplaced and could not be filed earlier and it was an important document for disposal of the appeal. Further, rejecting the prayer for taking the document on record on the ground that the document does not appear to be genuine, could not be a reason for rejecting the additional evidence. For this reason, both the orders are not sustainable.

05. Learned counsel appearing on behalf of respondent no. 1 vehemently contends that there is no infirmity in the orders impugned and the same do not require any interference. Learned counsel further submits that a spurious document has been filed by the petitioner before the learned first appellate court and this fact has been taken note of by the learned first appellate court. Learned counsel also points out that the said document does not find mention in the pleadings of the parties. Further, the said document was not produced by the original plaintiff/appellant during his life time and all of sudden,



present petitioner, who got substituted in place of his father, sought to bring that document as additional document. Therefore, the document so sought to be brought on record for being taken as additional evidence has been rightly rejected by the learned first appellate court.

06. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

07. Order 41 Rule 27 of the Code is the relevant provision 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) Wherever additional evidence is allowed to be produced by an appellate court, the court shall record the reason for its admission.”

08. From the provisions extracted 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 present case, except for stating that the document was kept in some box from where the petitioner got it and he sought to bring it on record as additional evidence, but the same is not appreciable due to a number of reasons. Evidently, the father of the petitioner lost the title suit and thereafter, he never sought to bring that document on record during the pendency of the appeal in his lifetime. All of sudden, the petitioner who was substituted in his place, tried to bring the document on record as additional evidence. However, when there is no pleadings for the same, it is not permissible to allow evidence what to say about any additional evidence. Moreover, it is not a piece of



evidence, which could not have been brought at the time of trial or even at the preliminary stage of appeal when the father of the petitioner was alive.

09. The Hon'ble Supreme Court in the case of *N. Kamalam (dead) and another v. Ayyasamy and another* reported in **(2001) 7 SCC 503**, in paragraph 19 held as under:-

“19. ... the provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the court of appeal— it does not authorise any lacunae or gaps in the evidence to be filled up. The authority and jurisdiction as conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way.”

10. So, it is very much clear that the petitioner has failed to bring his case under any of the conditions as mentioned in Order 41 Rule 27 of the Code and the document is not even required by the court for pronounce the judgment. Whole effort of the petitioner seems to be clutching at straws.

11. Another interesting aspect of the matter is that while filing the review application, the petitioner claimed that though the receipt mentions year 1885 along with *fasli year* 1347, but the same should be read as ‘year 1940’ in place of ‘year 1985’ though keeping intact the *fasli year* as 1347. This



prayer takes the cat out of the bag. If it is a genuine document, there is no occasion to make prayer to change its year or to read the year as something different in accordance with the wishes of the petitioner and this also shows the doubtful nature of the document.

12. In the light of discussion made hear-in-before, I am of the considered opinion that there is no merit in the submission of the learned counsel for the petitioner and the learned first appellate court has rightly rejected the application filed for taking additional evidence and also the application filed for review of the rejection order. Hence, the impugned orders 14.11.2022 and 05.03.2024 passed by the learned first appellate court are hereby affirmed.

13. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.06.2025
Transmission Date	NA

