

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1341 of 2019

1. Bipin Kumar Singh @ Bipin Singh S/o- Late Bhola Singh, Resident of Village-Bandaaur, P.O.-Bandaaur, P.S.-Nima Chandpura, District-Begusarai.
2. Janki Devi, W/o Late Bhola Singh Resident of Village- Bandaaur, P.O.-Bandaaur, P.S.- Nima, Chandpura, District- Begusarai.
3. Vijay Singh, S/o- Late Bhola Singh Resident of Village- Bandaaur, P.O.-Bandaaur, P.S.- Nima, Chandpura, District- Begusarai.
4. Sudha Devi, W/o- Vijay Kuwar Resident of Village and P.S.- Dalsinghsarai, District- Samastipur.

... .. Petitioner/s

Versus

1. Ashique Mian Son of Habib Mian @ Horil Mian Resident of Village and P.O.- Nima Chandpura, District- Begusarai.
- 2.1. Rahiaa Khatoon W/o Late Jalil Mian Resident of Village and P.O. Bandaaur, P.S. - Nima Chandpura, District- Begusarai.
- 2.2. Zakir Mian S/o Late Jalil Mian Resident of Village and P.O. Bandaaur, P.S. - Nima Chandpura, District- Begusarai.
- 2.3. Rabaan Mian S/o Late Jalil Mian, Resident of Village and P.O. Bandaaur, P.S. - Nima Chandpura, District- Begusarai.
- 2.4. Jabbar Mian Resident of Village and P.O. Bandaaur, P.S. - Nima Chandpura, District- Begusarai.
- 2.5. Sabrun Khatoon D/o Late Jalil Mian, Resident of Village and P.O. Bandaaur, P.S. - Nima Chandpura, District- Begusarai.
- 2.6. Sairoon Khatoon D/o Late Jalil Mian, Resident of Village and P.O. - Bandaaur, P.S. - Nima Chandpura, District- Begusarai.
3. Mokhatar Mian Son of Habib Mian @ Horil Mian Resident of Village and P.O.- Nima Chandpura, District- Begusarai.
4. Doman Mian, S/o- Late Rajo Mian Resident of Village- Bandaaur, P.O.-Bandaaur, P.S.- Nima, Chandpura, District- Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Advocate Ms. Preeti, Advocate Mr. Ravi Kumar Pandey, Advocate
For the Res Nos. 1 & 2	:	Mr. Md. Shahnawaz Ali, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 25-02-2025

Heard the learned counsel for the respective parties.



02. The instant petition has been filed by the petitioners for quashing the order dated 22.07.2019 passed by the learned Additional District Judge-VIII, Begusarai in Title Appeal No. 40 of 2007, whereby and whereunder the learned first appellate court rejected the petition dated 06.05.2019 filed by the petitioners under Order 41 Rule 27 r/w Section 151 of the Code of Civil Procedure, 1908 (for short 'the Code') for producing additional evidence.

03. Learned counsel for the petitioner submits that the petitioners are appellants before the learned first appellate court and they have filed the title appeal against the judgment and decree of Title Suit No. 43 of 1987 whereby and whereunder the learned trial court set aside two sale deeds dated 20.05.1982. During pendency of the appeal, one Doman Mian, the son of the vendor of the petitioner, filed three *Vakalatnama* distorting the case of the petitioner. The stand taken by the said Doman Mian was highly prejudicial to the cause of the petitioners and his contention is required to be refuted by adding positive evidence by the appellants/petitioners, who have been allowed amendment in their written statement. The appellants/petitioners have their double storied *pucca* building over their purchased land and the structure has been existing prior to the filing of the



suit and the plaintiffs concealed this fact and did not properly mention the value of the building and the property. Learned counsel further submits that in the light of subsequent development in the written statement and also on the ground of suspicious *Vakalatnama* and additional written statement filed by Doman Mian, it was imperative that the petitioners be allowed to adduce the additional evidence. However, the learned trial court committed an error of jurisdiction while passing the impugned order.

04. Learned counsel appearing on behalf of respondents opposes the submission made on behalf of the petitioners. Learned counsel submits that there is no infirmity in the impugned order and the same has been passed considering all the facts of the case.

05. I have given my thoughtful consideration to the rival submission of the parties and perused the record. It would be appropriate to consider the law 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.”

06. The purpose of the aforesaid provision is to enable the appellate court to see whether it requires the evidence sought to be adduced to enable it to pronounce the judgment or for any other substantial cause and the said provision has not been enacted to fill up any lacunae in the case of either of the parties. If the court feels that additional evidence is required for proper decision of the case and to determine the real controversy of the parties, such evidence could be allowed by the appellate court at



any stage of the appeal.

07. Coming to the facts of the case, from the application filed under Order 41 Rule 27 r/w Section 151 of the Code, except for making submission about filing of three *Vakalatnama* by Doman Mian, respondent no. 4, and claiming that his stand is prejudicial to the interest of appellant, nothing has been brought on record to show in what manner the appellant would be prejudiced and what was the requirement of additional evidence at this stage. Further, the appellants have completely failed to provide the details about the evidence which they intend to bring on record and its purpose. The application has been filed with completely vague submission that filing of three *Vakalatnama* would cause serious prejudice to the case of the appellants and the value of the building and land property was not less than 20 lacs and the appellants have to adduce evidence on this point as well without providing of relevance of this matter to the case of the appellants. It has nowhere been mentioned that the appellants were not given any opportunity to adduce the evidence by the learned trial court or their evidence was refused by it. Therefore, the additional evidence could be allowed only on the ground that the court requires it for adjudication of real question of controversy



between the parties. This is clearly not the case of the petitioners. In these circumstances, natural inference is that the documents have been brought only to fill the lacunae in the case of the petitioners.

08. Moreover, reference could be made to the decision of the Hon'ble Supreme Court in the case of *N. Kamalam (dead) and another v. Ayyasamy and another* reported in **(2001) 7 SCC 503**. It will be apposite to quote paragraph 19 of the said judgment.

“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.”

09. So, it is very much clear that the petitioners have failed to bring their case under any of the conditions as mentioned in Order 41 Rule 27 of the Code and their whole effort seems to be clutching at straws.

10. Having regard to the aforesaid discussion, I am not inclined to interfere with the impugned order dated 22.07.2019 passed by the learned Additional District Judge-



VIII, Begusarai in Title Appeal No. 40 of 2007 and hence, the same is hereby affirmed.

11. As a result, the present petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.03.2025
Transmission Date	NA

