

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1103 of 2023**

1. Ramawati Devi, W/o Late Anand Bihar Singh
 2. Ranjay Kumar Singh, S/o late Anand Bihar Singh
 3. Shesh Nath Singh, S/o Late Anand Bihar Singh
 4. Reena Devi, D/O Late Anand Bihar Singh
 5. Meena Devi, D/O Late Anand Bihar Singh
 6. Soni Kumari, D/O Late Anand Bihar Singh
 7. Dolly Kumari, D/O Late Anand Bihar Singh
- All are residents of Village and P.O. - Gokula Rupauli, P.S- Paroo, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. Nand Kumar Singh, S/o Late Paras Nath Singh
 2. Yashoda Devi, W/o Late Shyam Kumar Singh
 3. Satguru Sharan @ Naga, S/o Late Shyam Kumar Singh
 4. Priya Dashan Kumar Singh, S/o Late Shyam Kumar Singh
 5. Bulbul Devi, D/O Late Shyam Kumar Singh
 6. Nilu Devi, D/O Late Shyam Kumar Singh
 7. Guddi Kumari, D/O Late Shyam Kumar Singh
 8. Mantoran Kumari, D/O Late Shyam Kumar Singh
 9. Pramod Kumar Singh, S/o Late Shyam Kumar Singh
 10. Shiv Kumar Singh, S/o Late Shyam Kumar Singh
- All are residents of village and P.O. - Gokula Rupauli, P.S- Paroo, District- Muzaffarpur.
11. Majnu Devi, D/o Late Deonath Singh, R/o Raghunathpur, P.S.- Paroo, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Udit Narayan Singh, Advocate
For the Respondent/s : Mr. Shashi Bhushan Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 15-04-2025

Heard learned counsels for the petitioners and the
respondents.



2. The instant petition has been filed for setting aside the order dated 19.08.2023 passed in Title Appeal No.06/1998 by the court of learned Additional District Judge-1, Muzaffarpur whereby and whereunder the petition dated 14.10.2022 filed by the plaintiffs/respondents for bringing on record certain additional evidence has been allowed.

3. The learned counsel for the petitioners submits that petitioners were defendants and respondents were plaintiffs before the learned trial court and after the Title Suit No.25/1988 was decreed by the learned Sub Judge-V, Muzaffarpur, Title Appeal No. 06/1998 was preferred. The learned counsel further submits that initially the suit was decreed *ex-parte* against the defendants/respondents, but subsequently the *ex-parte* order was set aside. In the *ex-parte* hearing of title suit, several documents were marked exhibits after due consideration, but when the matter was being heard on contest, the plaintiffs withdrew certain documents and did not get those documents exhibited, which were earlier marked exhibits. During pendency of the appeal, after title suit was decreed against the defendants/petitioners, an application was filed on behalf of the plaintiffs/respondents for taking on record the documents of the plaintiffs. The learned counsel further submits that the



documents were all along within the knowledge of the respondents and still they did not take steps earlier for getting those documents exhibited. The learned counsel further submits that at the time of allowing the application, the learned first appellate court did not record any reasons why the documents were necessary to enable the court to pronounce the judgment. Therefore, the impugned order is not sustainable.

4. The learned counsel appearing on behalf of the respondents submits that the Title Appeal No. 06/1998 has been heard at length and, thereafter, it has been reserved for judgment and at this stage, it would not serve any useful purpose to interfere with the impugned order. The learned counsel further submits that moreover, the documents were already marked as exhibits when *ex-parte* hearing had been taking place. But *ex-parte* hearing was set aside and the matter was proceeded on contest against the petitioners. Inadvertently, those documents, which were marked earlier, could not be exhibited in the fresh proceeding. When this fact came to the knowledge of the petitioners, they moved application to bring on record those documents and the learned first appellate court allowed the application while recording the averment of the petitioners that the documents were vital, significant and relevant for deciding



the case and the objection of the petitioners was only to the extent that the petition for taking documents on record was malafide and has been filed only with a view to delay the disposal of the case.

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

6. Order 41 Rule 27 of the Code of Civil Procedure (hereinafter referred to as '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) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission”.

7. Apparently, the provisions of Order 41 Rule 27 (1)

(a) (aa) of the Code have no application in the present case.

Now the third condition is if the appellate court requires any documents to be produced or any witness to be examined so as to enable it to pronounce the judgment or for any other substantial cause the appellate court may allow such evidence or document to be produced or witness to be examined. The learned first appellate court has duly taken note of the fact that those documents were earlier exhibited during *ex-parte* hearing of the title suit and also taken objection of the petitioners in consideration but the petitioners themselves asserted that the documents are vital, significant and relevant for deciding the case. However, their objection is with regard to the stage of appeal which, according to the learned counsel for the petitioners, is at the final stage and now it has also come in submission that the Title Appeal No.06/1998 has been fixed for judgment.

8. Since the learned first appellate court itself has held



that the documents are vital, significant and relevant for deciding the case, on the basis of averment made on behalf of the petitioners, this Court would not like to interfere with the impugned order considering the finding of the learned first appellate court about the documents being significant for the purpose of disposal of the case before it.

9. Therefore, I do not find the impugned order suffers from any infirmity as the same has been passed after due consideration of the facts and law, as such, the same is affirmed.

10. Accordingly, the instant petition is dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2025
Transmission Date	NA

