

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.190 of 2010**

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Smt. Nutan Singh, wife of Late Shankar Sharan Singh, resident of mohalla-Shivpuri, P.S.-Shastri Nagar, Town & District-Patna.

... .. Appellant/s

**Versus**

1. The Estate of Shankar Sharan Singh, son of Late Ram Bhajan Singh, resident of mohalla-Shivpuri, P.S.-Shastri Nagar, Town & District-Patna.
2. Smt. Bibha Kumari Singh @ Bibha Devi, alleged to be wife of Late Shankar Sharan Singh, d/o Shri Parshuram Singh as described in the petition resident of Dhurichak, P.S.-Bihta, District-Patna.
3. Vivek Singh under the guardianship of Bibha Singh.

... .. Respondent/s

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with  
**Miscellaneous Appeal No. 215 of 2012**

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Smt. Nutan Singh, wife of Late Shankar Sharan Singh, resident of mohalla-Shivpuri, P.S.-Shastri Nagar, Town & District-Patna.

... .. Appellant/s

**Versus**

1. The Estate of Shankar Sharan Singh, son of Late Ram Bhajan Singh, resident of mohalla-Shivpuri, P.S.-Shastri Nagar, Town & District-Patna.
2. Smt. Bibha Kumari Singh @ Bibha Devi, alleged to be wife of Late Shankar Sharan Singh, d/o Shri Parshuram Singh as described in the petition resident of Dhurichak, P.S.-Bihta, District-Patna.

... .. Respondent/s

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**Appearance :**

(In Miscellaneous Appeal No. 190 of 2010)

For the Appellant/s : Mrs. Nivedita Nirvakar, Sr. Advocate  
Mr. Suresh Kumar Ishwar, Advocate  
Mr. Anil Kumar Tiwary, Advocate  
Ms. Richa, Advocate

For the Respondent/s : Mr. Ajay Kumar Sharma, Advocate  
(In Miscellaneous Appeal No. 215 of 2012)

For the Appellant/s : Mrs. Nivedita Nirvakar, Sr. Advocate  
Mr. Suresh Kumar Ishwar, Advocate  
Mr. Anil Kumar Tiwary, Advocate  
Ms. Richa, Advocate



For the Respondent/s : Mr. Ajay Kumar Sharma, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY**  
**CAV JUDGMENT**

**Date : 16-12-2022**

The two appeals vide M.A. No.190 of 2010 and M.A. No.215 of 2012 have been preferred by the appellant herein against the common order and judgment dated 26.06.2009 passed by the learned Additional District & Sessions Judge, IV, Patna in Succession Case No.115 of 2002 (**Smt. Nutan Singh vs. The Estate of Late Shankar Sharan Singh**) and Succession Case No.123 of 2002 (**Bibha Kumar Singh @ Bibha Singh & Vivek Singh vs. Estate of Late Shankar Sharan Singh**) respectively by which while the appeal preferred by appellant herein (Succession Case No.115 of 2002) was dismissed, the Succession Case No.123 of 2002 (preferred by the respondent Bibha Kumari Singh) was allowed.

2. The matrix of facts giving rise to the present appeal is/are as follows:

**Succession Case No.115 of 2002**

3. As per the appellant, she married Late Shankar Sharan Singh on 07.06.1985. Her husband, an Assistant with the Sub-Jail, Barh, Patna became traceless on 20.07.1995. With the



passage of time and as seven years lapsed, it was presumed under the law that he is no more.

4. He left behind the appellant herein and a minor daughter, Shubhra Shree who was born in the year 1988. Her husband, being a Government servant and as she was entitled for the pension, a Succession Certificate under Section 370 of the Indian Succession Act (henceforth for short 'the Act') was needed.

5. Accordingly, the Succession Case No.115 of 2002 was preferred.

6. The lady, respondent no.2, Bibha Kumari Singh appeared in the said succession case and opposed the prayer.

**Succession Case No.123 of 2002**

7. The case of Bibha Kumari Singh (respondent no.2) in Succession Case No.123 of 2002 was that her husband, Shankar Sharan Singh while posted in Sub-Jail, Barh as an Assistant went missing on 20.07.1995 whereafter the aforesaid appellant, Nutan Singh, presenting herself as his wife and in collusion with the local offices got the initial compensation of Rs.27,000/- from the Government and also filed Succession Case.

8. Her further case was that she married Shankar Sharan Singh on 17.05.1987 and the couple was blessed with a



son, Gajanand Singh @ Vivek Singh in the year 1998. She submitted joint photographs of the couple as also the joint Bank Account of Punjab National Bank, Neura Branch, Patna with her husband to show her bonafide. She further named Most. Prema Kumari, mother of Late Shankar Sharan Singh as her relative. She as such preferred the Succession Case No.123 of 2002 for succession certificate.

**9.** The two matters were taken up by the learned court together.

**10.** In Succession Case No.115 of 2002, Nutan Singh put forward five witnesses which were as follows:

- (i) AW.1-Nutan Singh the appellant herself;
- (ii) AW.1-Ram Bahadur Singh, father of the Appellant;
- (iii) AW.3-Rajo Thakur, the Barber;
- (iv) AW.4-Nunu Babu Rai Choudhary, a co-villager;
- (v) AW.5-Awadhesh Choudhary, Uncle of the Appellant;

**11.** The documents that were produced by way of exhibits were:



(i) Ext.1- certified copy of the Complaint Case No.379(c) of 2001;

(ii) Ext.1/A – certified copy of the order sheet of T.P.S. No. 292 of 2000;

(iii) Ext.2 -formal FIR of Gardanibagh P.S.520 of 1998.

**12.** AW.1, Nutan Singh claimed that her husband never married Bibha Kumari Singh and the case filed by her is false and concocted. According to the claim, her marriage took place at ‘Goenka Dharamshala’, Munger. It was her further claim that she was residing in a house which is registered in the name of Prema Kumari (mother of Late Shankar Sharan Singh) and is also paying the tax of the said house. She denied the claim that the case has been filed to grab the property of Late Shankar Sharan Singh.

**13.** AW.2, the Father of the appellant herein was also examined and according to him, his daughter was married on 17.06.1985 and out of the wedlock, a daughter was born. He also denied the marriage of Bibha Kumari Singh with Shankar Sharan Singh.



**14.** AW.3 is the Barber, Rajo Thakur and according to him, Nutan was married at 'Goenka Dharamshala', Munger in which he had participated as a Barber.

**15.** AW.4 is Nunu Babu Choudhary, a co-villager. According to him, the marriage was solemnized in his presence.

**16.** AW.5 Awadhesh Choudhary, claiming himself to be the uncle of appellant herein also stated to have participated in the marriage and in the cross-examination said that the 'Barat' stayed in the 'Bharat Guest House', Munger.

**17.** The documents that were produced by the appellant have already been narrated in the earlier paragraphs.

**18.** Bibha Kumari Singh (Succession Case No.123 of 2002) on the other hand produced eight witnesses.

**19.** AW.1-Satyendra Sharma, a co-villager of Bibha Singh's 'Maika' stated that the marriage was performed on 17.05.1987 in which he had participated. He further stated that out of the wedlock, a male child was born in the year 1988.

**20.** AW.2-Awadhesh Kumar is also a co-villager who claimed to have attended the 1987 marriage whereafter the lady went to Sheopuri, Patna (her in-laws house).

**21.** AW.3-Lalu Sharma is in the milk business for 30 years in the locality of Sheopuri, Patna. He claimed to have



supplied milk to Bibha Kumari Singh's in-laws house and according to him, the lady, Bibha Kumari Singh was married to Late Shankar Sharan Singh. Further in his cross-examination, it was informed by him that he was asked by the mother of Late Shankar Sharan Singh to stand as witness in the case of Bibha Kumari Singh.

**22.** AW.4 -Ram Bilash Thakur was a Barber who attended the marriage and supported the case of Bibha Kumari Singh.

**23.** AW.5-Shashi Bhushan Pandey was a Priest who performed the marriage of Shankar Sharan Singh with Bibha Kumari Singh and according to him the 'Tilak' and the 'Phaldhan' took place at Sheopuri. He further proved the 'Laganpatri' (Ext.1) that was given to the father of Bibha Kumari Singh as per the direction of the mother of Late Shankar Sharan Singh.

**24.** AW.6-Bibha Kumari Singh supported her case and further stated that the marriage was solemnized and out of the said wedlock, a son was born. Her further statement was that a joint passbook with her husband was opened and Late Shankar Sharan Singh also purchased a land in her name. It was her further case that there was a dispute between her father and husband



which led to lodging of Bihta P.S. Case No.197 of 1991 against her father by her husband which also bore his signature (Ext.7).

**25.** Bibha Kumari Singh further stated that on 20.07.1995, her husband became traceless and getting an opportunity, Nutan Singh came forward claiming herself as his wife. The lady Bibha Kumari Singh brought on record the photographs ('X' and 'X/1') for identification and also gave the day as Sunday, when she was married.

**26.** The further claim of Bibha Kumari Singh, the respondent herein is /are that her name found mentioned in the Ration Card at village-Vikrampur under police station Cheriya Bariarpur, District-Begusarai which is the native village of her husband.

**27.** AW.7 is Kamlesh Sharma who proved the 'Malgajari' receipts vide Ext.2 and Ext.2/1.

**28.** AW.8 is Parshuram Singh is father of the Bibha Kumari Singh. According to him, the marriage took place on 17.05.1987 whereafter a son was born namely, Gajanand Singh @ Vivek Singh. Further, a land was also purchased by his son-in-law in the name of his daughter from 'Pathya Pustak Sahkari Grih Nirman Samiti Limited', Digha, Patna' (henceforth for short 'the



Sahkari Samiti') (9 kathas). Further, his son-in-law had lodged a case against him vide Bihta P.S. Case No.197 of 1991.

**29.** He further informed that another piece of land was purchased by Late Shankar Sharan Singh in village-Pandeypur, Bihta (32 ½ decimal). He denied that his son-in-law ever married Nutan Singh and she preferred the case only to grab the property for which he had already informed the Department and the two letters that he sent have been marked as Ext.3 and Ext.3/A.

**30.** AW.9 is Uma Prasad who proved the acknowledgment receipt under the signature of Late Shankar Sharan Singh (Ext.4).

**31.** AW.10 is Shailesh Prasad who proved the sale deed dated 01.12.1993 in favour of Bibha Kumari Singh (Ext.5).

**32.** AW.11 is Nageshwar Singh who proved the 'Janamkundali' prepared by Ambika Prasad Bajpayee (Ext.6).

**33.** AW.12 is Deep Narayan Singh who proved the letter no.2680 dated 27.05.1987.

**34.** The other documents that Bibha Kumari Singh put forward as exhibits were:

- (i) Ext.7- the certified copy of the F.I.R. of Bihta P.S. Case No.197/1991 and



(ii) Ext.8- the certified copies of the sale deed dated 30.12.1992 as also the order sheet dated 30.01.2002 of Succession Case No.26/2019.

**35.** The learned court thereafter took up the matter and heard the respective parties at length.

**36.** The learned court finally vide an order dated 26.06.2009 held that the admitted facts are that Ram Bhajan Singh died leaving behind his widow, Prema Kumari and the couple was blessed amongst the other with the son, Shankar Sharan Singh who was an Assistant in Sub-Jail, Barh, Patna and became traceless since 20.05.1995.

**37.** The learned court further held that the dispute is whether the appellant-petitioner Nutan Singh is the legally wedded wife or it is Bibha Kumari Singh @ Vibha Singh, the respondent no.2 herein.

**38.** The learned court took into account the oral and documentary evidences in the case of Nutan Singh and held that:

(i) although Nutan Singh claimed to have married Shankar Sharan Singh on 27.06.1985 at



Munger, no document or photograph was/were adduced as evidence;

(ii) further, the appellant claimed that she had document regarding registration of the name of her daughter namely Shubhra Shree having signature of both the lady and her husband, late Shankar Sharan Singh, on perusal of record it was found that same was not filed by her and as such her claim that Subhra Shree is couple's daughter can not accepted;

(iii) further, there is no chit of paper to show that the marriage of Nutan Singh was performed with late Shankar Sharan Singh;

(iv) further finding was that the exhibits produced regarding certified copy of order sheet of T.P.S. No.292 of 2000 and formal F.I.R. of Gardanibagh P.S. Case No.521 of 1998 do not prove her to be wife of Late Shankar Sharan Singh and all the papers are after the date of missing of Shankar Sharan Singh i.e. 20.07.1995 and as such they do not come to her rescue.

**39.** Thus the learned court held that from the facts and circumstances stated above, it is not proved that Nutan Singh



is legally wedded wife of Shankar Sharan Singh and as such she is not entitled to get the succession certificate. Accordingly, the Succession Case No.115 of 2002 was dismissed.

**40.** Coming to the case of Bibha Kumari Singh (Succession Case No.123 of 2002), the learned court held that she claimed to have married Shankar Sharan Singh on 17.05.1987 and from the said wedlock, Gajanand Singh @ Vivek Singh was born. She also produced the photograph (Ext.X and X/1) to this effect.

**41.** It was further held by the court that the mother-in-law of Bibha Kumari Singh namely Prema Kumari (mother of late Shankar Sharan Singh) filed a 'No Objection Certificate' with affidavit in favour of the lady which is her admission that she is wife of her son. The mother-in-law further stated that she had no objection to the succession certificate granted to the lady-Bibha Kumari Singh.

**42.** It further took note of the fact that late Shankar Sharan Singh had filed Bihta P.S. Case No.197/1991 against Bibha Kumari Singh's father with allegation of assault where he had addressed him as father-in-law and the said document also supports that she is legally wedded wife of Late Shankar Sharan Singh.



**43.** Then the Ext.1, the 'Laganpatri' which shows that the marriage was fixed between the respondent Bibha Kumar Singh and her late husband, Shankar Sharan Singh. Again Ext.2 and 2/A, the revenue receipts in favour of Bibha Kumari Singh shows her to be the wife of Late Shankar Sharan Singh.

**44.** The court further held that the Ext.3 and 3/1 show that the concerned Department had called for certificate of succession treating her as his wife. Then, there is sale deed dated 01.02.1993 (Ext.5) in which her name stands incorporated as wife of Shankar Sharan Singh duly executed by the Secretary of 'Sahkari Samiti'. The court thus held that these documents are admissible in evidence.

**45.** The court further held that Ext.8 is another sale deed which shows that late Shankar Sharan Singh purchased some land in favour of Bibha Kumari Singh and all these documents are prior to the disappearance of the husband of the respondent herein i.e. before 20.07.1995.

**46.** The learned court thus held that Bibha Kumari Singh is the legally wedded wife of late Shankar Sharan Singh and there exists the relationship of wife and husband between them. It further held that the Nutan Singh failed to rebut all these evidences adduced on behalf of Bibha Kumari Singh and it cannot



be said that the documents have been created for giving them as evidences.

**47.** The court lastly held that the Bibha Kumari Singh had made out a case and thus entitled to the succession certificate.

**48.** Accordingly, it allowed the Succession Case No.123 of 2002.

**49.** In the result, while the Succession Case No.115 of 2002 preferred by Nutan Singh was dismissed, the Succession Case no.123 of 2002 preferred by Bibha Kumari Singh was allowed.

**50.** Aggrieved by the said order, the two appeals have been filed.

**51.** Heard learned Counsels for the parties.

**52.** Mrs. Nivedita Nirvakar, learned Senior Counsel appearing for the appellant, Nutan Singh submitted that the marriage with late Shankar Sharan Singh took place in 1985 and out of the said wedlock, a female child, Shubhra Shree was born. Further, she was residing in her in-laws house at Sheopuri after the marriage from where her husband went missing on 20.07.1995.



**53.** Later, the Department released Rs.27,000/- in her favour. The learned Senior Counsel further submitted that in the year 2000, she preferred Partition Suit (T.P.S. No.292 of 2000) before the competent court for her share from the ancestral property of her late husband. In the said suit, the family members of the late Shankar Sharan Singh appeared and opposed her plea stating that the partition had already been effected between the brothers before he became traceless. The learned counsel submits that as there was no opposition from late Shankar Sharan Singh's family members about her bonafide, it will be assumed that they accepted her as his wife.

**54.** The learned Senior Counsel emphasized that although the said suit was dismissed as premature in view of the fact that seven years had not lapsed after the disappearance of late Shankar Sharan Singh on 20.07.1995, the fact remains that her bonafide was not questioned. It is her further contention that in a 'Sanha' lodged by the respondent Bibha Kumari Singh before the Shastri Nagar Police Station on 21.08.1995, she alleged the role of the appellant herein in the disappearance of late Shankar Sharan Singh, accepting Nutan Singh as the first wife.

**55.** The further contention of learned Senior Counsel was that after the marriage, she was and is still staying at



Sheopuri, Patna which is the property of late Shankar Sharan Singh and registered in the name of her mother-in-law for which she is regularly paying revenue rent and is in possession of the rent receipts.

**56.** The next contention was the report of the Dy.S.P., Sachiwayala, Patna. The report/letter No.4025 dated 03.09.1996 relates to the disappearance of late Shankar Sharan Singh where he addressed the appellant to be the wife with further statement that Bibha Kumari Singh do not have any connection with the disappeared person.

**57.** By way of I.A. No.04 of 2022, the appellant has brought on record the photocopy of the service book duly signed by late Shankar Sharan Singh showing Nutan Singh as his wife. Then, there is another photocopy of the school report of Notre Dame Academy, Munger of her daughter, Shubhra Shree of the year 1993 for Class-I which bore the signature of late Shankar Sharan Singh beside the signature of the appellant.

**58.** Learned Senior Counsel thus submitted that all these documents fully support the case of the appellant that she was the legally wedded wife of late Shankar Sharan Singh.

**59.** Learned Senior Counsel further submitted that although all these documents were in possession of the appellant



but could not be brought on record before the learned court where the succession case was pending due to the fault of the lawyer conducting the case. However, the mistake has now been corrected and it has been brought before this Court by way I.A. No.04 of 2022.

**60.** Learned Senior Counsel reiterates that when the mistake was realized, prayer was made before the learned Court concerned, but the same was refused.

**61.** Aggrieved, a case vide C.R. 679 of 2009 was preferred before Patna High Court. The court, although chose not to interfere with the order but observed vide an order dated 29.04.2009 that the appellant will have the opportunity to bring the same in appeal.

**62.** She as such submits that in view of the 'jacket' that was provided by the High Court in its order dated 29.04.2009, the appellant was entitled to bring the same before this Court which had now been done by filing I.A. No.04/2022.

**63.** She submits that the documents that have been brought on record by way of I.A. conclusively prove her to be the wife of late Shankar Sharan Singh and as such the learned court erred in not granting Succession Certificate to her and as such the same is fit to be set aside.



64. Learned Senior Counsel submits that there are decisions to show that the documents/evidences can be taken up anytime at the appellate stage also and as such the same has been brought by way of I.A. No.04 of 2022 for the kind consideration of this Court, which cannot be put in the category of inordinate delay.

65. Learned Senior Counsel in support of her case referred to a decision of the Hon'ble Apex Court in a case **A. Andisamy Chettiar vs A. Subburaj Chettiar** reported in **(2015) 17 SCC 713** with specific emphasis on paragraphs 12 to 19 which read as follows:

*“12. From the opening words of sub-rule (1) of Rule 27, quoted 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 fulfilment of either of the three conditions mentioned in Rule 27. In the case at hand, no application was moved before the trial court seeking scientific examination of the document (Ext. A-4), nor can it be said that the plaintiff with due diligence could not have moved such*



*an application to get proved the documents relied upon by him. Now it is to be seen whether the third condition i.e. one contained in clause (b) of sub-rule (1) of Rule 27 is fulfilled or not.*

**13.** *In K.R. Mohan Reddy v. Net Work Inc. [K.R. Mohan Reddy v. Net Work Inc., (2007) 14 SCC 257] this Court has held as under: (SCC p. 261, para 19)*

*“19. The appellate court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial court, but it will be different if the court itself requires the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the court. But mere difficulty is not sufficient to issue such direction.”*

**14.** *In North Eastern Railway Admn. v. Bhagwan Das [North Eastern Railway Admn. v. Bhagwan Das, (2008) 8 SCC 511] this Court observed thus: (SCC pp. 515-16, para 13)*

*“13. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 CPC, which carves out an exception to the general rule, enables an appellate court to take additional evidence*



*or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 CPC. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said Rule are found to exist.”*

**15.** *In N. Kamalam v. Ayyasamy [N. Kamalam v. Ayyasamy, (2001) 7 SCC 503] this Court, interpreting Rule 27 of Order 41 of the Code, has observed in para 19 as under: (SCC p. 514)*

*“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.”*

**16.** *In Union of India v. Ibrahim Uddin [Union of India v. Ibrahim Uddin, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362] this Court has held as under: (SCC p. 171, para 49)*

*“49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out 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.”*

*(emphasis in original)*

*17. The learned counsel for the appellant argued before us that the High Court, in revision, at an interim stage of appeal pending before the lower appellate court, should not have interfered in the matter of requirement of additional evidence.*

*18. We have considered the argument advanced on behalf of the appellant and also perused the law laid down by this Court as to the exercise of revisional power under Section 115 of the Code in such matters. In Mahavir Singh v. Naresh Chandra [Mahavir Singh v. Naresh Chandra, (2001) 1 SCC 309] , explaining the scope of revision in the matters of acceptance of additional evidence by the*



*lower appellate court interpreting expression “or for any other substantial cause” in Rule 27 of Order 41, this Court has held as under: (SCC p. 314, para 5)*

*“5. ... The words ‘or for any other substantial cause’ must be read with the word ‘requires’, which is set out at the commencement of the provision, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this rule would apply as noticed by the Privy Council in Kessowji Issur v. Great Indian Peninsula Railway Co. [Kessowji Issur v. Great Indian Peninsula Railway Co., 1907 SCC OnLine PC 9 : (1906-07) 34 IA 115 : ILR (1907) 31 Bom 381] It is under these circumstances such a power could be exercised. Therefore, when the first appellate court did not find the necessity to allow the application, we fail to understand as to how the High Court [Naresh Chandra v. Mahavir Singh, 2000 SCC OnLine P&H 610 : (2001) 2 ICC 273] could, in exercise of its power under Section 115 CPC, have interfered with such an order, particularly when the whole appeal is not before the Court. It is only in the circumstances when the appellate court requires such evidence to pronounce the judgment the necessity to adduce additional evidence would arise and not in any other circumstances. When the first appellate court*



*passed the order on the application filed under Order 41 Rule 27 CPC, the whole appeal was before it and if the first appellate court is satisfied that additional evidence was not required, we fail to understand as to how the High Court could interfere with such an order under Section 115 CPC.”*

**19.** *In Gurdev Singh v. Mehnga Ram [Gurdev Singh v. Mehnga Ram, (1997) 6 SCC 507] this Court, on similar issue, has expressed the view as under: (SCC p. 508, para 2)*

*“2. We have heard the learned counsel for the parties. The grievance of the appellants before us is that in an appeal filed by them before the learned Additional District Judge, Ferozepur, in an application under Order 41 Rule 27(b) of the Code of Civil Procedure (CPC) the learned Additional District Judge at the final hearing of the appeal wrongly felt that additional evidence was required to be produced as requested by the appellants by way of examination of a handwriting expert. The High Court in the impugned order exercising jurisdiction under Section 115 CPC took the view that the order of the appellate court could not be sustained. In our view the approach of the High Court in revision at that interim stage when the appeal was pending for final hearing before the learned Additional District Judge was not justified and the High Court should*



*not have interfered with the order which was within the jurisdiction of the appellate court. The reason is obvious. The appellate court hearing the matter finally could exercise jurisdiction one way or the other under Order 41 Rule 27 specially clause (b). If the order was wrong on merits, it would always be open for the respondent to challenge the same in accordance with law if an occasion arises to carry the matter in second appeal after an appellate decree is passed. But at this interim stage, the High Court should not have felt itself convinced that the order was without jurisdiction. Only on this short question, without expressing any opinion on the merits of the controversy involved and on the legality of the contentions advanced by both the learned counsel for the parties regarding additional evidence, we allow this appeal, set aside the order of the High Court.”*

**66.** She further referred to another Supreme Court decision in **Union of India vs Ibrahim Uddin & Anr.** reported in **(2012) 8 SCC 148** with specific reference to paragraph 49, which read as follows:

***“Stage of consideration***

***49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing***



*of appeal on merits so as to find out 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. (Vide Arjan Singh v. Kartar Singh [1951 SCC 178 : AIR 1951 SC 193] and Natha Singh v. Financial Commr., Taxation [(1976) 3 SCC 28 : AIR 1976 SC 1053] )”*

67. The learned Senior Counsel further referred to another Apex Court decision in **Union of India vs Ibrahim Uddin & Anr.** reported in **2013 (1) PLJR (SC) 48** with specific reference to paras 25 to 27 and 29 and it is apt to incorporate the



same which are as follows:

*“25. 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 XLI Rule 27 CPC enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself. [Vide: K. Venkataramiah vs. A. Seetharama Reddy & Ors., AIR 1963 SC 1526; The Municipal Corporation of Greater Bombay vs. Lala Pancham & Ors., AIR 1965 SC 1008; Soonda Ram & Anr. vs. Rameshwaralal & Anr., AIR 1975 SC 479; and Syed Abdul Khader vs. Rami Reddy & Ors., AIR 1979 SC 553].*



*26. The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. [Vide: Haji Mohammed Ishaq Wd. S.K. Mohammed & Ors. vs. Mohamed Iqbal and Mohamed Ali and Co., AIR 1978 SC 798].*

*27. Under Order XLI, Rule 27 CPC, the appellate Court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate Court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate Court is empowered to admit*



*additional evidence. [Vide: Lala Pancham & Ors. (supra)]*

*28. It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. Hence, in the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. [Vide: State of U.P. vs. Manbodhan Lal Srivastava, AIR 1957 SC 912; and S. Rajagopal vs. C.M. Armugam & Ors., AIR 1969 SC 101].*

*29. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this rule. The mere fact that certain evidence is important, is not in*



*itself a sufficient ground for admitting that evidence in appeal.”*

68. Learned Senior Counsel then referred to another order of the Hon'ble Apex Court in **Sanjay Kumar Singh vs. State of Jharkhand** reported in **AIR 2022 SC 1372** wherein it was held that whether the additional evidence sought to be adduced would have a direct bearing on pronouncing judgement or for any other substantial cause has to be looked into and in the particular facts and circumstance the application for adducing additional evidences be allowed. It is apt to quote para-5 of the said judgement

*“5. 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.”*

**69.** She lastly brought on record an unreported judgement of the Allahabad High Court in **Dr. Chandra Deo Tyagi vs. Additional District Judge Court** in which the Hon’ble High Court in para-52 held as follows:

*“37. The appellate court should not ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide Haji Mohammed Ishaq v. Mohd. Iqbal and Mohd. Ali and Co. [(1978) 2 SCC 493: AIR 1978 SC 7981)*

**52.** Thus, from the above, it is crystal clear that an application for taking additional



*evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of the final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the Judgment or for any other substantial cause. In case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/in-executable and is liable to be ignored."*

**70.** Learned Senior Counsel reiterates that in the light of aforesaid decisions she was entitled to adducing additional evidence as she had got a 'jacket' by the Patna High Court to adduce evidence during the period of appeal. Even if the same was not brought on record at the time of filing of the appeal, the same was always available to the appellant which now has been availed by her by bringing on record these materials by way of Interlocutory Applications and thus the submission of learned Senior Counsel is that this cannot be said to be an action at a very belated stage as the appeal is still pending before this Court. She



however concedes that there was no pleading about it in the appeal filed in 2010 nor the same was brought on record at the initial stage.

71. Mrs. Nivedita Nirvakar, learned Senior Counsel as such submits that both the appeals are fit to be allowed and the order of the learned court below being perverse, the same are fit to be set aside.

72. Per contra, Mr. Ajay Kumar Sharma, learned counsel for the respondents, the suit itself was not maintainable as ingredients of section 372 of the Indian Succession Act (henceforth for short 'the Act') was not followed inasmuch as the mother of late Shankar Sharan Singh was not made party. Learned counsel has brought the attention of this Court to Section 372 with specific reference to sub-para (c) to support his contention.

73. It is apt to bring on record section 372 of 'the Act' read as follows:

**“372 Application for certificate.** —(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or



*on behalf of a plaintiff, and setting forth the following particulars, namely:—*

*(a) the time of the death of the deceased;*  
*(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;*

*(c) the family or other near relatives of the deceased and their respective residences;*

*(d) the right in which the petitioner claims;*

*(e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and*

*(f) the debts and securities in respect of which the certificate is applied for.*

*(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).*



*[(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.]*

74. Learned counsel submitted that ingredients of section 372 of 'the Act' are mandatory and have to be followed and in case of non-compliance, section 383 comes into picture which provides for revocation. He thus submits the same is mandatory and not directory.

75. In support of his contention, learned counsel has brought this Court's attention to a case of Andhra Pradesh High Court in **K.P. Narayana Reddy alias Police Narayana Reddy, vs. Alla Nagi Reddy and others** reported in **AIR 1996 Andhra Pradesh 198** with reference to paragraph 7 which reads as follow:

*"7. From the reading of both the Section 372 and 373 of the Act, it is clear that the conditions provided under Section 372 of the Act are made mandatory. For non-compliance of the conditions under Section 372, Section 383 of the Act provides for revocation. When non-compliance of the conditions results in revocation of the certificate itself then the only inference that is possible in that the conditions imposed by Section 372 are mandatory and not directory. It is to be seen at this stage itself that this Section 383 of the Act is*



*similar to Section 263 of the Act. Section 263 of the Act also provides for revocation of the grant of probate or letters of administration. In that Section, the Act itself provides certain illustrations to the explanation to that Section. For the purpose of discussion, it is also necessary for me to extract Section 263 of the Act along with illustrations as under:*

*"263. Revocation or annulment for just cause:--*

*The grant of probate or letters of administration may be revoked or annulled for just cause.*

*Explanation :--Just cause shall be deemed to exist where --*

*(a) the proceedings to obtain the grant were defective in substance;*

*or*

*(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;*

*or*

*(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or*

*(d) the grant has become useless and inoperative through circumstances; or*

*(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.*

*Illustrations*



*(i) The Court by which the grant was made had no jurisdiction.*

*(ii) The grant was made without citing parties who ought to have been cited.*

*(iii) The will of which probate was obtained was forged or revoked.*

*(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.*

*(v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.*

*(vi) Since probate was granted, a later will has been discovered.*

*(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.*

*(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind."*

76. Learned counsel for the appellant then drew the attention of this Court to the plaint filed by the appellant in the Succession Case No.115 of 2002 which are as follows:

*In,*

*The Court of District Judge, Patna*

*Succession Certificate Case No.115 of 2002*

*Smt. Nutan Singh, Wife of Late Shankar Sharan Singh, at present resident in mohalla-Shivpuri, P.S.-Shastri Nagar, Town & District-Patna.*

*.....Petitioner.*



*Versus*

*The Estate of Late Shankar Sharan Singh, son of Late Ram Bhajan Singh, resident of mohalla-Shivpuri, P.S.-Shastri Nagar, Town & District-Patna.*

*.....opposite party.*

*The humble petition under Section 372 of the Succession Act on behalf of the petitioner above named.*

77. He thus submits that when the condition imposed by Section 372 of the Act are mandatory, failure to do so, the suit preferred by Nutan Singh was not even maintainable.

78. Learned counsel for the respondent no.2 further submits that the plaint was originally filed in 2000 which came to be dismissed on 26.06.2009. Thereafter the appellant preferred appeal in 2010 but there was/were no whisper about refusal of the learned court in allowing additional evidences nor there was any mention regarding presence of Service Book/Report Card and has again drawn the attention of this Court to the prayer made by the appellant in M.A. No.190 of 2010 which are incorporated hereinbelow:

**GROUND**

*I. For that the judgement of the Court below is erroneous on fact as well as in law.*



*II. For that the court below has failed to appreciate that the appellant has succeeded in proving her case.*

*III. For that the court below has failed to appreciate that the witnesses deposed on behalf of this appellant are competent to prove her case and actually proved it where as witness produced by Bigha are not competent to prove her the alleged marriage with Shankar Sharan Singh.*

*IV. For that the court below has committed illegality in not marking the documents filed by this appellant on 06-05-2003.*

*V. For that the learned court below has committed illegality in refusing to call for the documents from the custody of the department of Jail.*

*VI. For that the court below has failed to appreciate that Ext.2 in which this appellant was described as wife of Shankar Sharan Singh by Prem Kumari Singh mother of Late Shankar Sharan Singh proves the case of appellant.*

*VII. For that the court below has failed to appreciate that in the partition suit 292/2000 Defendant mother of Late*



*Shankar Sharan Singh never challenged claim of plaintiff as wife of Shankar Singh and did not speak of marriage with Bibha Kumari.*

*VIII. For that the court below has committed illegality in relying upon the description of Bibha Singh as wife of Shankar Sharan Singh in sale deed as it is no evidence against the appellate as the appellate was not party in the sale deed.*

*IX. for that the court below has committed illegality in relying upon Ext.7 CC the FIR alleged to have been filed by Shankar Sharan Singh when the original was not called for and the signature on it was not proved to be of Shankar Sharan Singh.*

*X. For that the court below has committed illegality in relying upon lagan Patrika which can be manufactured at any stage & can't be said to be reliable.*

*XI. For that the so called joint account alleged to be in name of Bibha & her husband is not correct because that acet stand in the name of Bibha & S.K. Singh & not exhibited too.*



*XII. For that the court below has committed illegality in not following the requirement of Section 374, 375 of Indian Succession Act.*

**79.** Learned counsel submits that although the appellant is harping on refusal of the learned court to adduce additional evidences forcing her to move before Patna High Court which although did not interfered but gave her 'jacket' to use it at any stage of appeal, there is nothing to submit on what prevented it from bringing those documents at the time of filing of appeal and/or incorporate the same in the ground.

**80.** He thus submits that all the documents that have been brought on record after two decades are created documents and thus fit to be rejected.

**81.** He further submits that in absence of any pleading in the original plaint preferred in 2010 (MA No.190 of 2010 and MA No.215 of 2012), the said contention is also fit to be rejected. In this connection, learned counsel brought the attention of this Court to Order XLI Rule 27 of the Code of Civil Procedure which read as follows:

***“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 exam med.*

*(2) Whenever additional evidence is allowed to the produced, by an Appellate Court, the court shall record the reason for its admission.”*

**82.** The learned counsel for the respondents further referred to the reported case of Hon’ble Apex Court in **Union of India vs. Ibrahim Uddin & Anr.** [2013(1) PLJR (SC) 48] with specific reference to paragraphs 25 to 29, which this Court has already recorded in earlier paragraphs.



**83.** On the facts, the learned counsel for the respondent no.2 submitted that so far as the claim of the appellant on preferring partition suit and there having no question on her bonafide as wife is concerned, firstly the respondent was not made party to the said partition suit and secondly, the family members who opposed the prayer simply stated that the partition already stands effected. Thus, in the particular facts and the circumstance, it cannot be construed that they accepted the lady as wife of late Shankar Sharan Singh.

**84.** Further, the learned counsel for the respondents submitted that so far as the alleged 'Sanha' before Shastri Nagar Police Station is concerned, the same is a created document in collusion with local officials after twenty years and in absence of lodging of any FIR and or final form /charge sheet in the matter, the said contention put forward by the appellant is fit to be rejected. Again, so far as the letter issued by the Dy.S.P., Sachwalaya, Patna is concerned, learned counsel submits that he had to submit report on the disappearance of late Shankar Sharan Singh and had no business to incorporate who is the legally wedded wife and who is not.

**85.** The next contention was that so far as grant of Rs.27,000/- by the Department is concerned, the same was taken



by the appellant on the false premise of being wife of late Shankar Sharan Singh and once the respondent stepped in, no further payment was made to her.

**86.** Further, on the documents produced by appellant after two decades which bore signature of late Shankar Sharan Singh, learned counsel submits that as per the instruction, late Shankar Sharan Singh always put in his signature in Hindi and never ever signed any document in English and as such both the documents annexed by the appellant's side i.e. the school record as well as the service book showing signature of late Shankar Sharan Singh in English can be safely construed to be forged and fabricated documents which have been created to influence the case and are subject to vigilance enquiry.

**87.** The learned counsel lastly submits that a bare perusal of the two signatures on service book vis-a-vis school record of minor child shows that even the said signatures of late Shankar Sharan Singh do not match with each other. Learned counsel submits that had these been genuine documents, the appellant would not have waited for two decades to bring the same on record and thus these have been created in furtherance of her case.



**88.** The learned counsel for the respondent thus submits that both the appeals are without merit and fit to be rejected.

**89.** Having gone through the rival contentions put forward by the learned counsels for the appellants as well as the respondents and after perusing the records of the case as also the order dated 26.06.2009 in question, in the considered view of this Court, so far as the appellant **Nutan Singh** is concerned:

(i) the admitted fact is that the contrary to Section 372 of the Act, she chose not to incorporate the details of the mother-in-law (family member of late Shankar Sharan Singh) in the succession suit brought by her;

(ii) she also failed to bring on record, as observed by the learned Additional District & Sessions Judge, IV, Patna any document prior to 20.07.1995 to prove her bonafide to be the wife of late Shankar Sharan Singh;

(iii) further, occupying the property (registered in the name of mother-in-law) and paying the rent do not in any way prove her to be the wife of Late Shankar Sharan Singh;



(iv) Rs.27,000/- that was released in her favour initially was done on the application put forward by her when the Government did not had any information about Bibha Kumari Singh and once they came to know about it, no further payment was made;

(v) the fault of the lawyer to bring on record the documents before the learned court below, as submitted by learned Senior Counsel for the appellant do not come to her rescue in view of the observations of the Apex Court in **Union of India vs. Ibrahim Uddin & Anr. [2013 (1) PLJR (SC) 48]** wherein it was specifically held in para-29 that:

*‘the inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realize the importance of a document does not constitute a “substantial cause” within the meaning of this rule.*

(vi) even while filing the appeal before this Court in the year 2010 and 2012, the appellant chose not to mention about these documents;



(vii) it is for the first time and two decades later that the documents have been brought on record vide I.A. No.04 of 2022;

(viii) in this context, the statement of the learned counsel for the respondent becomes important that late Shankar Sharan Singh always used to put in his signature in Hindi;

(ix) it is also important to take into account the fact that the consistent stand of the appellant is that after the marriage she remained stationed in Sheopuri, Patna where she still claims to reside, the school card which has been brought on record in I.A. No.04 of 2022 shows that the little child, Shubhra Shree was a student of Class-I in Notre Dame Academy, Munger. There is no explanation on this point by the learned Senior Counsel for the appellant.

90. On the other hand, so far as the case of respondent **Bibha Singh @ Bibha Kumari Singh** is concerned:

(i) before the learned court, she provided the 'Laganpatri' of her marriage, as also the joint photographs showing the couple



with their child, Gajanand Singh @ Vivek Singh;

(ii) she also provided the Bank account which was jointly opened in the name of Bibha Kumari and Late Shankar Sharan Singh;

(iii) she further provided the sale deed of the land that was purchased in 1993;

(iv) then there is Bihta P.S. Case No.197 of 1991 lodged by late Shankar Shankar Singh himself against his father-in-law (father of Bibha Kumari Singh) alleging beating by him;

(v) another important document that was brought on record before the learned court was the 'No objection certificate' given by Prema Kumari, mother of late Shankar Sharan Singh in favour of Bibha Kumari Singh;

**91.** Thus the appellant Nutan Singh failed to put forward any document prior to 20.07.1995 before the learned court which could show her to be wife of late Shankar Sharan Singh. Further, the documents that have now been pushed forward



after two decades cannot be relied upon in the backdrop of the observations made above. So far as Bibha Kumari Singh is concerned, she has been successful in bringing on record several documents in support of her claim to be the legally wedded wife of late Shankar Sharan Singh.

**92.** Regarding the decision cited by the learned Senior Counsel in the **A. Andisamy Chettiar vs A. Subburaj Chettiar** (*supra*), the Hon'ble Apex Court in fact held that when the appeal was pending for final hearing before the learned Additional District Judge, the High Court was not justified in interfering with the order which was within the jurisdiction of the appellate court. This in the considered view of this Court this does not support the case of the appellant.

**93.** So far as the Hon'ble Apex Court decision in **Union of India vs Ibrahim Uddin & Anr. [2013 (1) PLJR (SC) 49]** is concerned, a bare perusal of para-29 would show that the Hon'ble Apex Court clearly held that inadvertence of the party or his inability to understand the legal issue involved or wrong advise or of a pleader or the negligence of a pleader or that the party did not realized importance of document does not constitute 'substantial cause' within the meaning of the rule. The mere fact that certain evidence is important is not in itself a sufficient



ground for admitting that evidence in appeal that too after two decades.

**94.** Regarding the Hon'ble Apex Court decision in **Sanjay Kumar Singh vs. State of Jharkhand** (supra), in that case there was no material available on record to arrive at a fair market value of acquired land and as such the Apex Court held that the High Court ought to have allowed the application for adducing evidences. Here as against the appellant, the learned court had conclusive evidences to come to the conclusion that Bibha Kumari Singh had successfully proved her case to be the legally wedded wife of late Shankar Sharan Singh.

**95.** So far as the **Dr. Chandra Deo Tyagi vs. Additional District Judge Court** (supra) case is concerned, a perusal of para-37 shows that the High Court had cautioned that ordinarily the court should not allow the evidence to be adduced in order to enable a party to raise a new point in appeal.

**96.** Thus from the aforesaid facts, it is clear that:  
**(i)** the appellant while filing the succession case chose not to follow the ingredients of section 372(c) of the Indian Succession Act by deliberately omitting the name of Prema Kumari,



mother of Late Shankar Sharan Singh from the  
plaint;

**(ii)** she further chose not to speak a line about  
presence of additional documents while filing the  
present appeal;

**(iii)** she further did not produced these  
documents for a decade but filed it only vide I.A.  
No.4 of 2022 wrongly construing the observation  
of Patna High Court in C.R. 679 of 2009 to be the  
'jacket' which can be used anytime;

**(iv)** in the light of aforesaid facts, the  
contention of learned counsel for the respondent  
that these are created documents cannot be  
ignored;

**(v)** on the other hand, there are number of  
documents prior to 20-07-1995 that were part of  
the suit of Bibha Kumari Singh to show her  
bonafide as wife of late Shankar Sharan Singh;

**(vi)** the inadvertence of the party or his  
inability to understand or wrong advice/negligence  
of pleader cannot be the basis/sufficient cause for  
allowing the appellant to wait for infinite period to



come forward with the document according to his/her convenience;

(vii) thus the appellant could not made out a case to interfere with the common order and judgement dated 26.06.2009 passed by the learned Additional District and Sessions Judge, IV, Patna.

97. This Court thus holds that the learned learned Additional District & Sessions Judge, IV, Patna rightly chose to allow the Succession Case No.123 of 2002 preferred by Bibha Kumari Singh while dismissing the Succession Case No.115 of 2002 of the appellant, Nutan Singh.

98. The two appeals vide M.A. No.190 of 2010 and M.A. No.215 of 2012 fail and are accordingly dismissed.

**(Rajiv Roy, J)**

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	08.12.2022
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