

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.55 of 2018**

Gyanti Devi Wife of Sri Ramdil Singh, resident of Village- Bahadurpur, P.O.-
Makhdumabad, P.S.- Parasi, District- Arwal.

... .. Petitioner/s

Versus

1. Udai Kumar
2. Ranjay Kumar,
1 and 2 are sons of Late Dhaneshwar Yadav, residents of Village-
Bahadurpur, P.O.- Makhdumabad, P.S.- Parasi, District- Arwal.
3. Krishnanand Mishra.
4. Bachspati Mishra,
3 and 4 are sons of Late Bishwanath Mishra, resident of Village- Dilia, P.O.
and P.S. Chauri, District- Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vikash Sharma Mr. Jitendra Kumar
For the Respondent/s	:	Mr. Ajay Kumar Singh

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

ORAL

Date : 30-08-2022

Heard learned Counsel for the parties concerned.

2. The present application has been filed by the petitioner challenging the order, dated 04.12.2017, passed, in Title Appeal No. 58 of 2016/03 of 2017, by learned Presiding Officer, Fast Track Court No. II, Jehanabad (hereinafter referred to as the learned Lower Appellate Court), by which the learned Lower Appellate Court has accepted the additional evidence sought to be adduced by the appellants-respondent nos. 1 and 2.



3. Learned Counsel for the petitioner submits that one Bishwanath Mishra was the owner of a piece of land, situated in Khata No. 78, Plot Nos. 18, 22, 23 and 24, having an area of 01 acre 06 decimals By virtue of unregistered sale deed, dated 19.06.1970, the land in question was sold in favour of the petitioner, showing the value of the land less than Rs. 100/-, i.e. Rs. 99/-. A chak khatyan was prepared through consolidation proceeding and a new chak khata no. 66, chak plot no. 22, having an area of one acre has been allotted to the plaintiff-petitioner.

4. The respondent nos. 3 and 4 herein are the son of the original owner, Bishwanath Mishra, and respondent no. 1 and 2 are the purchasers from respondent nos. 3 and 4, by virtue of registered sale deed, dated 16.03.2015.

5. Learned Counsel for the petitioner submits that Title Suit No. 05 of 2015 was decreed in favour of the plaintiff, vide judgment and decree, dated 24.10.2016 and the respondents, being aggrieved by the said judgment and decree, preferred Title Appeal No. 58 of 2016 on 02.11.2016. Two petitions, dated 10.07.2017 and 22.07.2017, were filed by the appellants, under Order XLI Rule 27 of the C.P.C. to adduce additional evidence in the appeal and altogether 15 documents were sought to be adduced by the appellants. Out of 15 documents, the learned Lower Appellate



Court has taken only 07 documents on record by way of additional evidence. He, referring to the impugned order, submits that the learned Lower Appellate Court, while allowing the petitions for adducing additional evidence, has committed grave error of law and has only recorded in the impugned order that the documents adduced by way of additional evidence are necessary to decide the title of the land in question. He further submits that Order XLI Rule 27 of the C.P.C. is in three parts, which are quoted herein below and the petitions filed by the appellants for adducing additional evidence have been allowed on the basis of Order XLI Rule 27 (b) of the C.P.C., but without arriving at the finding that how the documents are necessary for pronouncing the judgment effectively in the appeal.

“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.”

6. Accordingly, the submission is that the learned Lower Appellate Court has not applied its mind in the correct factual and legal perspective while allowing the petitions for adducing additional evidence by the impugned order.

7. In support of his argument, learned Counsel relies upon the decision of the Supreme Court, in the case of **Union of India v. Ibrahim Uddin and Another**, reported in **2013 (1) PLJR 48 (SC)**, and submits that the application/petition for taking additional evidence at an appellate stage even if the same has been filed during the pendency of the appeal is required to be taken at the time of final hearing of the appeal, i.e. at the 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.

8. Paragraphs 38 to 41 of **Ibrahim Uddin** (supra) are quoted herein below:

38. 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. [Vide: **Arjan Singh vs. Kartar Singh & Ors.**, AIR 1951 SC 193; and **Natha Singh & Ors. vs. The Financial Commissioner, Taxation, Punjab & Ors.**, AIR 1976 SC 1053].



39. In **Parsotim Thakur & Ors. vs. Lal Mohar Thakur & Ors.**, AIR 1931 PC 143, it was held:—

“The provisions of S. 107 as elucidated by O. 41, R. 27 are clearly not intended to allow a litigant who has been unsuccessful in the lower Court to patch up the weak parts of his case and fill up omissions in the court of appeal. Under R. 27, Cl. (1) (b) it is only where the appellate Court “requires” it (i.e. finds it needful). **The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but “when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent”**, it may well be that the defect may be pointed out by a party, or that a party may move the Court to apply the defect, but **the requirement must be the requirement of the court upon its appreciation of evidence as it stands.** Wherever the Court adopts this procedure it is bound by R. 27(2) to record its reasons for so doing, and under R. 29 must specify the points to which the evidence is to be confined and record on its proceedings the points so specified. **The power so conferred** upon the Court by the Code ought to be **very sparingly exercised** and one requirement at least of any new evidence to be adduced should be that it should have a **direct and important bearing on a main issue in the case...**” (Emphasis added)



[See also: **Indirajit Pratab Sahi vs. Amar Singh**, AIR 1928 P.C. 128]

40. In **Arjan Singh vs. Kartar Singh & Ors.** (supra), this Court held:—

“.....If the additional evidence was allowed to be adduced contrary to the principles governing the reception of such evidence, **it would be a case of improper exercise of discretion, and the additional evidence so brought on the record will have to be ignored and the case decided as if it was non-existent.....** The order allowing the appellant to call the additional evidence is dated 17.8.1942. The appeal was heard on 24.4.1942. There was thus no examination of the evidence on the record and a decision reached that the evidence as it stood disclosed a lacuna which the court required to be filled up for pronouncing the judgment” (Emphasis added)

41. Thus, from the above, it is crystal clear that 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 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, 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/inexecutable and is liable to be ignored. In the instant case, the application under Order XLI Rule 27 CPC was filed on 6.4.1998 and it was allowed on 28.4.1999 though the first appeal was heard and disposed of on 15.10.1999. In view of law referred to hereinabove, the order dated 28.4.1999 is just to be ignored.”

9. He next relies upon the decision of the Supreme Court, in the case of **Satish Kumar Gupta etc. etc. v. State of Haryana and Others**, reported in **2017 (2) PLJR 104 (SC)**, and submits that additional evidence cannot be permitted to fill-in the lacunae or to patch-up the weak points of the case.

10. Paragraphs 19 and 20 of **Satish Kumar Gupta** (supra) are quoted herein below:-

19. The other part of the impugned order permitting additional evidence and remanding the case for fresh decision is uncalled for. No case was made out for permitting additional evidence on settled principles under Order XLI Rule 27 of CPC. The provision is reproduced below:—

"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."

20. It is clear that neither the Trial Court has refused to receive the evidence nor it could be said that the evidence sought to be adduced was not available despite the exercise of due diligence nor it could be held to necessary to pronounce the judgment. Additional evidence cannot be permitted to fill-in the lacunae or to patch-up the weak points in the case. There was no ground for remand in these circumstances."



11. He also relies upon the decision of the Supreme Court, in the case of **State of Rajasthan v. T. N. Sahani and Others**, reported in (2001) 10 SCC 619, and submits that the application under Order XLI Rule 27 of the C.P.C. should have been decided along with the appeal.

12. Paragraph 4 of *T. N. Sahani* (supra) is quoted herein below:-

“4. It may be pointed out that this Court as long back as in 1963 in *K. Venkataramiah v. Seetharama Reddy* [AIR 1963 SC 1526] pointed out the scope of unamended provision of Order 41 Rule 27(c) that though there might well be cases where even though the court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) CPC can



be invoked. So the application under Order 41 Rule 27 should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view, would be inappropriate. Further the reason given for the dismissal of the application is untenable. The order under challenge cannot, therefore, be sustained. It is accordingly set aside. The application is restored to its file. The High Court will now consider the appeal and the application and decide the matter afresh in accordance with law.”

13. On the other hand, learned Counsel for the respondents-appellants submits that the actual background of the case is that chak khata no. 66, chak plot no. 22, was recorded in the name of Bishwanath Mishra, as raiyat in the year 1980. He also submits that on 04.05.1991, the son of Bishwanath Mishra, namely, Krishna Nand Mishra mortgaged the land in question with Ram Dil Singh, husband of the petitioner and his younger brother, namely, Shyam Dil Singh, both resident of village Bahadurpur, for a sum of Rs. 16,000/-. The son of Bishwanath Mishra approached Ram Dil Singh and Shyam Dil Singh for redemption of the mortgage and tender a sum of Rs. 16,000/- but



they refused to accept the amount. On 26.05.2014, the sons of Bishwanath Mishra served legal notice to this effect to the husband of the petitioner, but he did not reply and again, a reminder legal notice was sent on 26.06.2014, but no reply was given by the mortgagee. Thereafter, the sons of Bishwanath Mishra filed Misc. Case No. 05 of 2014 in the Court of learned Munsif, Jehanabad, seeking relief to receive the money deposited by the husband of the petitioner and to deliver the vacant possession of the land in question. In Misc. Case No. 05 of 2014, notices were issued to Ram Dil Singh and Shyam Dil Singh, out of which Shyam Dil Singh appeared and accepted the execution of mortgaged deed, but Ram Dil Singh deliberately did not receive notice and avoid to appear in Misc. Case No. 05 of 2014.

14. The further case of the respondents is that the respondent no. 3 made attempt to return the amount of Rs. 16,000/- to Ram Dil Singh and requested to redeem the mortgage, but Ram Dil Singh started delaying tactics on one pretext or the other and subsequently with the help of Revenue Karamchari, mutated the land in dispute in the name of his wife, i.e. the petitioner herein, and revenue receipt was issued for the year 2013-14 in her name and the land possession certificate was also issued in her favour.



15. He next submits that the plaintiff, on the basis of forged and fabricated unregistered sale deed allegedly executed in the year 1970 by Bishwanth Mishra, is claiming title over the land in question and the defendants-respondents have categorically come out with the case that the unregistered sale deed, on which the plaintiff is claiming her title, is forged and fabricated and in order to support their case, the respondents-defendants brought the registered sale deeds of the adjacent lands of the year 1948 and 1950, showing that the lands adjacent to the lands in question were sold much more than Rs. 100/-; whereas the plaintiff has claimed that 01 acre and 06 decimals of land was purchased in the year 1970 for a consideration amount of Rs. 99/- only. He submits that the aforesaid two sale deeds were not to the knowledge of the defendants-respondents and despite due diligence, they could not get certified copies of the sale deeds and the moment they got the certified copies of the aforesaid two sale deeds of the lands adjacent to the land in question, they filed petitions, under Order XLI Rule 27 of the C.P.C., for adducing additional evidence bringing on record those sale deeds as well as some other contemporaneous documents for just and effective decision of the appeal.



16. He also submits that altogether 15 documents were sought to be adduced by the appellants as additional evidence before the learned Lower Appellate Court, but the learned Lower Appellate Court, after discussing and going through the entire evidence and materials available on record, has accepted only 07 documents as additional evidence and refused to take 08 documents as additional evidence, which the learned Lower Appellate Court found irrelevant for the purpose of additional evidence.

17. Referring to the impugned order, learned Counsel submits that the learned Lower Appellate Court has also come to the conclusion that additional evidence sought to be adduced by the respondents-defendants is necessary to decide the title of the land in question and also that the appellants-defendants could not have brought the same earlier on record and after due diligence obtained those documents. He submits that the learned Lower Appellate Court has also come to the finding that the documents, which have been accepted to be adduced as additional evidence, are relevant documents and these documents are required to pronounce the judgment. He next submits that by the impugned order, the petitioner-plaintiff has also been given liberty to adduce evidence, if any, as rebuttal.



18. In course of his argument, learned Counsel for the respondents relies upon the decision of this Court, in the case of **Hazar Choudhary v. Arun Kumar Pandey and Others**, reported in **2017 (1) PLJR 791** and submits that this Court, after taking into consideration the decisions relied upon by the Supreme Court, in the cases of **Ibrahim Uddin** (supra) and **A. Andisamy Chettiar v. A. Subburaj Chettiar**, reported in **2016 (1) PLJR 394 (SC)**, has held that there is no universal law that the application must be considered at the time of final hearing, but there is also no universal law that it must be decided prior to hearing of the appeal. He further submits that this Court, in **Hazar Choudhary** (supra), has come to the conclusion that it depends upon the facts of each case inasmuch as the Supreme Court, in the decisions cited above, nowhere has held that in each and every case, the application must be considered at the time of final hearing of the appeal or it be considered prior to the hearing of the appeal.

19. Accordingly, the submission is that the learned Lower Appellate Court, after considering the relevancy of the documents and after proper application of the judicial mind and after coming to the conclusion that these documents are required to pronounce the judgment, has allowed the respondents-appellants to adduce evidence at the appellate stage.



20. In reply to the arguments advanced on behalf of the respondents-appellants, learned Counsel for the petitioner-plaintiff submits that “Abhidari Khata Pustika” and “Chak Khatiyan” have not yet been submitted by the respondents-appellants, though the same has been allowed by the learned Lower Appellate Court to be adduced as additional evidence and on the contrary, the petitioner-plaintiff has produced “Abhidari Khata Pustika” and “Chak Khatiyan” prepared in the name of the petitioner-plaintiff before this Court as Annexures 3 and 4 to this application. He further submits that the chak khatiyan prepared during the course of chakbandi proceeding is not justiciable by a Civil Court. He next submits that the submissions, which have been advanced on behalf of the respondents-appellants, are not mentioned in the petition filed by the respondents-appellants before the learned Lower Appellate Court for adducing additional evidence, under Order XLI Rule 27 of the C.P.C.

21. I have heard learned Counsel for the parties concerned and have perused the materials on record, including the impugned order. The respondents-appellants have filed two petitions, dated 10.07.2017 and 22.07.2017, by which they sought to adduce additional evidence at the appellate stage, copies of the petitions filed by the respondents-appellants are annexed as



Annexures P-1 and P-2. From perusal of the two petitions, it appears that the respondents-appellants have stated that the documents are important documents for just decision of the appeal and are helpful to pronounce judgment and these documents were not in their knowledge and they got the knowledge of the same recently. Therefore, the documents could not be filed during the pendency of the suit even after exercise of due diligence. The respondents-appellants, after having come to know about these documents, obtained certified copies and sought to adduce the same as a piece of additional evidence.

22. From the dispute involved in this case, it appears that the petitioner-plaintiff filed the suit for declaration of title on the basis of unregistered sale deed, dated 19.06.1970, claiming that the plaintiff had purchased the same from the father of respondent nos. 3 and 4 for a consideration amount of Rs. 99/-; whereas the case of the respondents-appellants is that the said sale deed, dated 19.06.1970 is forged and fabricated piece of document and the same has been prepared when the appellants-respondents tried to redeem the mortgage, which was created in favour of the husband of the petitioner-plaintiff by the father of respondent nos. 3 and 4. It also appears that the parties contested the suit and judgment went against the defendants-respondents. All the documents and



exhibits were available before the learned Lower Appellate Court when the petitions for adducing additional evidence were filed by the respondents-appellants and from perusal of the impugned order, it appears that the learned Lower Appellate Court considered each and every documents sought to be adduced by way of additional evidence and out of 15 documents, the learned Lower Appellate Court has allowed only 07 documents to be taken on record by way of additional evidence after taking into consideration the relevancy of those 07 document and rejected 08 documents, which the respondents-appellants sought to adduce after arriving at the finding that the remaining 08 documents are not essential to decide the appeal. Insofar as allowing the 07 documents to be taken on record as additional evidence, the learned Lower Appellate Court has also come to the finding that these documents are necessary to decide the title of the land in question and despite due diligence, the appellants could not obtain the same earlier and further that these documents are relevant documents and are required to pronounce the effective judgment.

23. From the impugned order, it appears that the learned Lower Appellate Court has exercised its discretion after taking into consideration all the ingredients and the fact necessary for allowing the parties to adduce additional evidence and the fact that



some of the documents have been accepted as piece of evidence and some of them have been rejected goes to show that the learned Lower Appellate Court has applied its judicial mind on the subject matter.

24. Accordingly, in the facts and circumstances of the present case and taking into consideration the rival submissions, I am satisfied that the learned Lower Appellate Court has considered each and every documents, which the defendants-appellants sought to adduce as additional evidence, and after going through the contents of the documents, allowed only 07 documents out of 15 to be taken on record as additional evidence in order to pronounce effective judgment.

25. Accordingly, I do not find any cogent reason to interfere with the impugned order. This application, thus, stands dismissed.

26. However, there shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
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