

GC-10
17/5/13

In the High Court of Judicature at Patna.

(Civil Writ Jurisdiction)

C.W.J.C.No. _____ of 2013

Suresh Mistri and others..... Petitioners

Versus

The State of Bihar and others..... Respondents.

Subject:- Other Miscellaneous Matter.

INDEX.

Sl.No.	Particulars.	Pages.
1.	Synopsis.	i to ii
2.	Petition under Article 227 of the Constitution of India.	1 to 14
3.	Annexure-1: A true/type copy of the order dated 16.02.2013.	15-16
4.	Annexure-2: A true copy of the petition dated 22.12.2010.	17-20
5.	Annexure-3: A true copy of rejoinder dated 17.5.2011.	21-24.
6.	Vakalatnama of the petitioners.	

In the High Court of Judicature at Patna.

(Civil Writ Jurisdiction)

C.W.J.C.No. _____ of 2013.

Suresh Mistri and others..... Petitioners

Versus

The State of Bihar and others..... Respondents.

-: SYNOPSIS :-

1999

Plaintiff filed T.S.No.98 of 1993 for declaration

of Title of the plaintiff over the suit land and

also for declaration that R.S.entry of the same in

the name of State of Bihar is null and void.

Defendant appeared and filed their Written Statement

raising the question of maintainability of the suit.

~~T.A.No.2/08~~
30.11.2007

Suit was dismissed vice Judgement and decree dated

30.11.2007.

T.A.No.2/08

Plaintiff/appellant filed T.A.No.2/08 against Judge-

ment and decree dated 30.11.2007.

(ii)

22.12.2010 Appellant filed an application dated 22.12.2010

Under Order 41 Rule 27 of the Code of Civil Procedure.

17.5.2011 Petitioner filed their rejoinder.

- Petitioner filed their rejoinder.

- Learned Lower Appellate Court be allowed the petition

Under Order 41 Rule 27 of the Code of Civil Procedure.

- Hence instant writ petition.

.....

GOVT. OF BIHAR
REGISTRATION, EXCISE & PROHIBITION DEPT.
PATNA SCORE PATNA

COURT FEE

Authorization No. 2675



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29.4.2013

BIHAR

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In the High Court of Judicature at Patna.

(Civil Writ Jurisdiction)

C.W.J.C.No. _____ of 2013.

In the matter of an

application under Article

227 of the Constitution of

India.

And

In the matter of :-

1. Suresh Mistri Wife of Late Bhunbeshwari Mistri
2. Sonu Mistri Son of Suresh Mistri.
3. Ram Bilash Mistri.
4. Laxman Mistri.
5. Satrugan Mistri.

All are sons of Nago Mistri.

6. Bijal Mistri. Son of Bhikna Mistri

7. Pappu ^{Kumar} Mistri, son of Bhikha Mistri
8. Maimu Mistri ^{@ Maheshwar Mistri}, son of Bhikha Mistri.

All resident of Village-Maura Purani, Police Station
Chousa, District-Madhepura.

..... Petitioners

Versus

1. The State of Bihar through Collector, Madhepura
2. Niraj Yadav Son of Late Ram Charitra Yadav.

Resident of Village-Puraini, Police Station-Puraini,
District-Madhepura.

3. Smt. Nutan Devi Wife of Arun Yadav Resident of
Village-Phulout, Police Station-Chousa, District-
Madhepura.
4. Smt. Pinki Yadav Wife of Raj Kishore Yadav, resident
of Village-Barikhol, Police Station-Chousa, District-
Madhepura.

..... Appellants/ Respondents.

To,

To,

The Hon'ble Ms. Justice Rekha M. Doshi,
the Chief Justice of the High Court of
Judicature at Patna and her Companion
Justices of the said Hon'ble Court.

The humble petition on
behalf of the abovesaid
petitioners;

Most Respectfully Sheweth :-

1. That this application is being filed for issuance of writ in the nature of certiorari for quashing the order dated 16.2.2013 passed by Additional District Judge, Ad-hoc No. II in T.A. No. 02 of 2008 by which he has allowed the petition dated 22.12.2010 filed by the appellant/Respondent Under Order 41 Rule 27 of the Code of Civil Procedure and for other relief/reliefs for which petitioners deemed entitled to.

A true/type copy of the order

dated 16.02.2013 is annexed

herewith and marked as

Annexure-' 1' to this petition

2. That following substantial question of law has been involved in this case for kind consideration of this Hon'ble Court.

- (i) Whether the impugned order is vitiated for non application of Judicial mind ?
- (ii) Whether the learned Court below has failed to consider that
- (iii) Whether the Lower appellate has failed to consider the scope and ambit of Order 41 Rule 27 of the Code of Civil Procedure ?
- (iv) Whether the Lower appellate court has failed to consider that appellant has not disclosed that under what circumstances he has not filed the said document in the court below ?

- (v) Whether the impugned order is bad in law and facts both ?
- (vi) Whether the order passed by Court below is premature and law settled by apex Court is that it can be considered only at the time of hearing of appeal ?
- (vii) Whether Register D is a public document, a copy of which could be taken at trial stage no filed of he considered it to be relevant. The Respondent can not take advantage of his own wrong ?

3. That the petitioner is citizen of India and resides within the territorial Jurisdiction of this Hon'ble Court.

4. That the plaintiff/Appellant filed T.S.No. 98 of 1999 for declaration of title of the plaintiff over the suit land and also for declaration that R.S.entry

of the same in the name of State of Bihar is null and void. A prayer for recovery of possession has also been made against defendant 2nd Set with respect to Schedule-II land.

5. That according to plaintiff suit land was originally belonged to Raja Shiv Chandra Banarjee and the same was recorded in C.S.Gaimajaru Malik and subsequently it become in the Zamindari of Shri Radhakant Mishra who settled the same to Raghunandan Prasad Mandal through Salami on 27.2.1933. Further it has been pleaded that plaintiff got title and possession over the same and he was paying rent to Ex-landlord and return was submitted by Ex-landlord in favour of Raghunandan Prasad Mandal, the father of plaintiff. It has further been pleaded that C.S.Plot No.835 was Parti over which he was growing vegetable before his dispossession by defendant 2nd Set.

6. That it is further case of Plaintiff is that during Revisional survey operation the suit land has been wrongly recorded in the name of State of Bihar as Anabad Bihar Sarkar and defendant 2nd set has encroached 12 decimal of land of Plot No.1117 and has made Phoo's house. It has further been stated that he has requested to remove the structure but defendant 2nd party evaded the same. Plaintiff also requested to State of Bihar to execute Bajidava in respect of the suit land in favour of Plaintiff. It has also been pleaded that Zamabandi with respect to the suit land is running in the name of plaintiff. Since defendant 2nd party finally on 6.2.1999 refuse to remove the structure from the suit land, hence instant suit has been filed.

7. That after summon defendant No.4,5 and 6 appeared and filed their written statement in which they have raised the question of maintainability of the suit itself on various grounds. It has been stated the

plaintiff has no concern with Schedule-II land, Defendant 2nd party has got his residential house over the same since more than 60 years having several pucca and other houses thereon. It has been further pleaded that Schedule-II property is exclusively belongs to the defendant and the documents filed by plaintiff in respect of the same is forge and fabricated documents. It is also the case of defendant is that suit land belongs to State of Bihar over which Defendant 2nd party has got adverse possession to the knowledge of State of Bihar and also the plaintiff and the entire persons living in the vicinity.

8. That after completion of pleading issues were found and evidence were lead by both the parties and both parties were argued the case at length. Finally suit was dismissed vide Judgement and decree dated 30.11.2007.

9. That being aggrieved and dissatisfied

with the Judgement and decree dated 30.11.2007
plaintiff filed T.A.No.2 of 2008 in the Court of
District Judge, Madhepura which is still pending for
its final disposal.

10. That during pendency of the appeal
plaintiff/Appellant filed an application dated 22.12.
2010 Under Order 41 Rule 27 of the Code of Civil Pro-
cedure with a prayer to take the certified copy of
Register-D of the Ex-landlord of Bargan Estate as an
additional evidence.

A true copy of petition
dated 22.12.2010 is annexed
herewith and marked as
Annexure-'2' to this appli-
-cation.

11. That the petitioner has filed its
rejoinder to the said petition on 17.5.2011 raising

question of maintainability of the same on the ground that plaintiff was fully aware about the Register-D if any but he knowingly and deliberately did not file the same.

A true copy of Rejoinder dated 17.5.2011 is annexed herewith and marked as Annexure-3 to this application.

12. That it is significant to mention here that from perusal of the petition dated 22.12.2010 it will be evident that appellant has not stated any thing that why he has not filed said document in the Court below and when he came to know about the said document for the first time .

13. That Order 41 Rule 27 (1(aa) specifically says that "the party seeking to produce additional evidence, establishes that notwithstanding

the exercise of due diligences such evidence was not within his knowledge or could not, after the exercise of due diligence, be produce by him at the time when the decree appealed against was passed," or.

14. That it is also important to mention here that under Order 41 Rule 27(2) duty has been cast upon the appellate Court that "When ever additional evidence is allowed to be produced by appellate Court, the Court shall record the reason for its admission".

15. That the learned Court below without considering the facts and circumstances of the case and without even following the specific provision of law allowed the petition dated 22.12.2010 and got exhibited the document without assign any reason.

16. That while allowing application dated 22.12.2010 learned Court below in concluding paragraph has stated that Amendment is of formal nature. It will

not affect the trial and Judgement in the appeal.

Contrary to that fact that application has been filed for taking the alleged document as an additional evidence.

17. That instead of allowing the said petition dated 22.12.2010 learned Court below ought to have passed the order that petition Under Order 41 Rule 27 will be consider at the time of final hearing. Infact appellants by way of filing frivolous application wants to linger the appeal.

18. That the petitioner left with no other alternative efficacious remedy than to move before this Hon' ble Court.

19. That the petitioner has not moved before this Hon' ble Court earlier for the aforesaid relief.

It is, therefore, prayed that

your Lordships may graciously be

pleased to issue Rule NISI calling

- 13 -

upon the Respondents show cause that why the relief as claimed in Paragraph No.1 of the writ petition will not be allowed at admission stage itself and cause shown if any make the rule absolute

And/Or

Be pleased to pass such other order/ orders as your Lordships may deem fit and proper in the facts and circumstance of the case.

And

It is further prayed that during pendency of this application operation of the impugned order may kindly be stayed.

And for this, the petitioners shall ever pray.

AFFIDAVIT.

I, Suresh Mistri, aged about 50 years, Son of Late Bhunbeshwari Mistri, resident of Village-Mauza Puraini Police Station-Chousa, District-Madhepura, do hereby solemnly affirm and state as follows:-

1. That I am Petitioner No.1 in this case and as such am well acquainted with the facts and circumstances of the case.

2. That the contents of this petition have been read over and explained to me in Hindi which I have fully understood the same and the statements of facts made in Paragraph Nos.

4, 5, 6, 11 to 19 are true to my knowledge and those made in Paragraph Nos. 7 to 10, are based upon informations derived from the records of the case which I believe to be true and the rest are by way of submissions to this Hon'ble Court.

3. That the Annexures are true/photostat copies of their respective originals.

सुरेश मिश्र

Identified by the deponent
Rajni Singh Kumar Srivastava
R.N. 11/18/12
Clerk of Rajesh Chandra
Date - 17/5/13.

20.03.13

more court of HANUO NO.11, MADHUPUR - 7.15.
T.A. No. 02/2008
T.A - 02/08 Nceras Yadav & others
state of Bihar & others.

16-02-13

Attendance has been filed on behalf of both parties. Heard on the petition dt- 22-12-10 filed on behalf of appellants upon 41 rule 27 of the C.P.C and the rejoinder petition dated 17-05-11 filed on behalf of the respondents.

It is submitted on behalf of the appellants that the previous ex-land lord was Sheo Chandra Banarji in whose name C.S. Khatiyau started of acting of his Jaminidari under whom there were another ex-land lord. That accepting settlement by Shobha Kant the ex-land lord vesting return for an area of 16 Katha and 1 dhar in the name of Raghunandan Mandal, who died leaving behind son Ramesh Chandra Yadav, whose son is appellant. The appellant has obtained the C.C of the Register - A, which will show the capacity of ex-land lord as well as their status. Earlier this evidence was not known to the appellants. Hence the same could not be produced during the trial of T.S. No. 98/99 in the lower court. The appellant has obtained copy of register - A of the ex-land lord on 15-04-2009. This document is most-essential to be taken as additional evidence.

It is submitted on behalf of the ld. lawyer of the respondent that the petition dt-22-12-10 has got no merit and the same is fit to be rejected.

10-00

03.04.13



GOVT. OF BIHAR
REGISTRATION EXCISE & PROMOTION DEPT.
MADHUPURA SCORE MAADHUPURA
COURT FEE
Authorization No. 2037
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Continued -

Stamp Officer

In the Court of Adhoc No.II, Madhepura.

T.A.No.02/2008

Neeraj Yadav and others.

V/S

State of Bihar and others.

16.02.13 Attendance has been filed on behalf of both parties. Heard on the petition dt.22.12.10 filed on behalf of appellants U/O 41 Rule 27 of the C.P.C. and the rejoinder petition dated 17.05.11 filed on behalf of the Respondents.

It is submitted on behalf of the appellants that the previous ex-landlord was Shree Chandra Banarji in whose name C.S.Khatiyani started acting of big zamindari under whom there were another ex-landlord. That accepting settlement by Shobha Kant Jha ex-landlord vesting return for an area of 16 Katha and 1 dhur in the name of Raghunandan Mandal, who died leaving behind son Ram Charitra Yadav, whose son is appellant. The appellant has obtained the C.c. of the Register-D, which will show the capacity of ex-landlord as well as their status. Earlier this evidence was not known to the appellants hence the same could not be produced during the trial of T.S.No.98/09 in the lower Court. The appellant has obtained copy of Register-D of the ex-landlord on 15.04.2009. This document is most essential to be taken as additional evidence.

It is submitted on behalf of the Ld.Lawyer of the Respondent that the petition dt.22.12.10 has got no merit and the same is fit to be rejected.

Continued -

TPA-02/08

[Handwritten mark]

Continued
16-02-13



Heard and perused the record. Amendment is of formal nature. It will not affect the trial and judgment in the appeal. For the end of justice the petition dated 22-12-10 filed on behalf of appellant is allowed. The certified copy of register filed on behalf of appellant is marked as extra. Put up on 23-02-13 for argument.

dictated
A. D. J
Adhoni II

COMPLETED BY
03.04.13

Submitted to on a due bill
[Handwritten signature]

T.A. 02/08

Continued
16.02.13

Heard and perused the record. Amendment is of formal in nature. It will not affect the trial and Judgement in the appeal. For the end of justice the petition dated 22.12.10. filed on behalf of appellant is allowed. The Certified copy of register-D filed on behalf of appellant is marked as Ext.1. Put up on 23.02.13 for argument.

(Dictated)
Sd/- Illegible
A.D.J.
Adhoc-II.

2946
20.03.13



C.F. = 1/11
In the court of Adhoc No. II
Madhepura.
T.A. No. 02/2008
Neerao Yadav & others
state of Bihar & others.

In
The court of Fast Track Court No. IV,

Annexure-2.

Madhipura.

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20:00

03.04.13

R/C
DKP
29/12/10

T.A.No. 2/2008

Neerao Yadav & others - - - - - Appellants.

Versus

State of Bihar & others - - - - - Respondants.



The humble petition on behalf of
appellants U/O 41 rule 27 of the
C.P.C. for taking additional evidence
most respectfully;

Sheweth:-

- 1) That, this appeal has been preferred against the judgement and decree passed by learned Civil Judge Junior Division, No. 1, Madhipura in 98/1999.
- 2) That, the appellant who was plaintiff in lower court had claimed the suit land by virtue of Pawangi of Ex-landlord Shobha Kant Jha, and further that

R/C
P.B. Gupta
22.12.10
A.P. Adv.

GOVT. OF BIHAR
REGISTRATION, EXCISE & PROHIBITION DEPT.
MADHEPURA SCORE, MADHEPURA



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the previous ex-landlord was Sheo Chandra Banarji in whose name C.S.Khatian holds having a big Jamin-dari under whom there were another ex-landlord.

3) That, accepting the settlement by Shobha Kant Jha ex-landlord, vesting Return for an area of 16K. 1 dhur in the name of Raghunandan Mandal who died leaving behind son Ram Charitra yadav whose son is Appellant.

4) That, the learned lower court made doubt in the integrity capacity and status of Shobha Kant Jha as well as on other grounds dismissed the suit.

5) That, after passing of judgement after due endeavor the appellant has obtained the certified copy of the Register-D which will show the capacity of ex-landlord as well their status.

6) That, this evidence was not known to appellant earlier hence the same could not be produced during trial of T.S.98/99;

7) That, the appellant has obtained the certified copy of Register-D of the ex-landlord on 15.4.2009.

8) That, the said document is most essential to be taken as additional evidence for the just adjudication and settle the real controversy in issue.



[Handwritten mark]

It is, therefore, prayed that your honour would be graciously pleased to take the certified copy of Register D of the ex-landlord of Bargaon estate which is annexed with this petition with a list of documents for the ends of justice.

Appellant

[Handwritten signature]

through

[Handwritten signature]
Advocate.

Verification:

I, the appellant do hereby solemnly affirm and declare that the contents of above parasx are true to the best of my personal knowledge and belief. Verified and signed here at civil court,

Madhipura. 22.12.2010

[Handwritten signature]

Deponent.

[Handwritten signature]

TWENTY RUPEES 3/86

C-724

20

In
The court of P.T.C. No. IV,
Madhipura

T.A.No. 2/2008

Neeraj Yadav & others - - - - - Appellants.

Versus

State of Bihar & others - - - - - Respondants.

Affidavit.

I, Neeraj Yadav aged about 41 yrs.
s/o late Ramcharitra^{Yadav} of village Puraini
P.S. Puraini Dist. Madhipura, do hereby
solemnly affirm and declare as follows:-

1. That, the I am one of the appellant in this suit and well acquainted with the facts of the case.
2. That, the contents of the attached petition are true to the best of my personal knowledge and belief.
3. That, the contents of the affidavit are true to the best of my knowledge and belief.



Neeraj Yadav
जिसका पता है श्री श्री मती
अधिकारों के लिए
समय 2.00 PM पर लिख
नामों के लिए
प्रत्येक मास पर

Deponent.
नीरज यादव

Identified by me.
Jai Narayan Yadav.

E.N. 4427/A Advocate

sworn to be a true copy 22/12/10

COMPILED BY
0803.04.10
Sampurna Clerk

Signature of Jai Narayan Yadav

Annexure-3

In the Court of Fast Track No.Vth, Madhepura.

Title Appeal No.02/2008

Deeraj Kumar and others..... Appellants

Versus

State of Bihar and others..... Respondents.

The humble rejoinder petition

on behalf of Respondents 2nd Party

Most Respectfully Sheweth :-

1. That, the petition dated 22.12.2010 filed U/O XXXXI Rule 27 of C.P.C. for taking additional Evidence on behalf of Plaintiff is unwarranted and uncalled for and the same is fit to be rejected.
2. That, in the Title Suit No.98/99 plaintiff Appellant have filed the suit for declaration of title of the plaintiff over the suit land and also for a declaration that R.S.Khatiyani entry recorded in name of State of Bihar is null and void and also sought relief for recovery of possession against the defendant 2nd party over Schedule-II land.

-2-

3. That, the appellant in the learned lower Court claimed that his ancestor took the land by way of Parmangi from Ex-land Lord under the Jamindari of Raja Shivchandra Banarji but the return filed by the Plaintiff/appellant was not by the State of Raja Shiv-Chandra Banarji. The certified copy of two cases revaluation return was filed on behalf of the plaintiff/Appellant which was issued by one Radha Kant Jha and another Radha Kant Mandal and never filed any petition in the learned Lower Court to given evidence in support of his claim and contention with regard to the alleged copy of Register-D.

4. That, plaintiff has got full knowledge with regard to Register-D if any but he knowingly and deliberately evaded to file the same in the learned Lower Court.

5. That it is settle principle of law that in the State of Appeal learned Appellate Court may took Additional evidence but the scope is limited and the

-3-

petition of appellant is not within such limited scope.

6. That, the plaintiff /appellant in spite of making argument want to prolong the appeal by one way or the other.

7. That, petition dated 22.12.2010 was got no merit and the same is fit to be rejected.

It is, therefore, prayed that your Honour may be graciously pleased to reject the petition dated 22.12.2010 filed on behalf of the appellant and for this petitioner shall ever pray.

Petitioner.

Through

Advocate.

17.5.2011.

-4-

VERIFICATION.

I, Suresh Mishtri S/O Late Bhumneshwari Mistri
Respondent 2nd Party No.2 do hereby solemnly affirm
and declare that the contents of above paras have been
read over and explained to me in Hindi are true and
correct to the best of my personal knowledge and belief.

Deponent.

Advocate

17.5.2011