

Title Appeal No. 128 of 2014

Order No. 26
16-12-2017

This day is fixed for hearing the petition dated 10-08-2017. Both the learned Advocates are present by filing two ready slips. One objection petition is filed on behalf of the Respondents against the petition dated 10-08-2017 and in such a position the petition is taken up for hearing.

Learned Advocate for the Appellants/Defendants mainly submitted that by this petition Appellants want to submit two public documents before this Appellate Court by tendering the same through evidence and for this reason the present petition is filed.

Learned Advocate for the Respondents/Plaintiffs vehemently opposed it by submitting nutshell that the Appellants/Defendants neither mentioned about those two documents in their written statement filed in the Court below nor the said written statement contains anything regarding the subject matter of these documents and those documents are in no way connected with this Appeal or Title Suit and that if those two documents be allowed to be entertained in this Appeal, a new fact shall be introduced which is not permitted in law.

He also added that in their instant petition the custody of those documents were not mentioned and even if at the time of leading evidence on behalf of them it was not stated as such and that unless Written statement is amended to that extent, nothing can be allowed by this Appellate Court and also that in the instant petition filed by the Appellants, it does not contain any other particular as to which persons are involved in those papers etc. and in such a position, if the petition is allowed, then injustice shall be invited towards the Respondent/ Plaintiffs.

Having heard both sides, I perused the instant petition and the objection filed against the same.

This instant petition was filed by the Appellants/Defendants praying for passing an order allowing the Appellants to submit two documents (certified copy of Judgment and decree of Title Suit No.131 of 1962 and certified copy of R.O.R (L.R) in respect of the suit land and rent receipts).

Having heard argument and perused the petition and it's objection, I am observing that this petition does not contain the provision of law under which the documents are required to be entertained. If this is to be considered under Order 41 Rule 27 of C.P.C, then the appellants is required to establish primarily that in spite of exercising the due diligence those documents could not be placed at the time of adducing evidence and or the matter of those documents were not within the knowledge of the Appellants/Defendants and the same was not produced by them at the time when the decree was passed against which this Appeal is preferred.

Apart from that I am observing that this Appeal was filed against the judgment and decree passed in Title Suit No. 162 of 2009 but the Appellants/Defendants wanted to file the certified copy of judgment and decree of Title Suit No.131 of 1962 along with other papers only on the grounds that these are the two public documents and apparently it seemed through this one page petition that there is some relation and strong connection between the two matters. In the instant petition the matter of

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custody of the documents intended to be filed is found not to have been mentioned satisfactorily.

In such a position if those two documents are allowed to be brought by the Appellants/ Defendants into this Appeal only on the ground of being Public documents in its nature, I think that the nature and character of this Appeal as well as the Title Suit in the Court below against which this Appeal is referred shall be changed for which the Respondents/ Plaintiffs may be highly prejudiced.

Regard being had to the entire facts and circumstances of this matter in this Appeal, I do not think it fit that this petition dated 10-08-2017 filed by the Appellants/ Defendants is to be allowed. Rather it is liable to be discarded.

Hence, it is,

Ordered

that the petition dated 10-08-2017 filed by the Appellants/ Defendants is hereby rejected on contest.

To **01-02-2018** for hearing the stay petition dated 10-11-2014 and L.C.R and further order.

(Dictated & Corrected)

District Judge, Purulia

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