

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 6367 of 2016**

Budhuwa Oraon son of Ghansi Oraon resident of village Katri Mahuatoli, P.O. Kotam, P.S. and District Gumla..... ... Petitioner

Versus

1.Ghura Oraon son of Late Suna Oraon resident of village Katri Mahuatoli, P.O. Kotam, P.S. Gumla, District Gumla.

2.Bilta Oraon son of Late Bahuran Oraon, resident of village Katri Mahuatoli, P.O. Kotam, P.S. Gumla, District Gumla at present village Kogi Gage Basti, P.O. Devi Jhora Bagan, P.S. Chopra, District Uttar Dinajpur (W.B.).

3.Deputy Commissioner, Gumla, P.O., P.S. & District Gumla.

.... Respondents

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioners : Mr. Arun Kumar, Advocate

For the Respondents. : Mr. Sandeep Verma, Advocate

08/26th June, 2024

1. Mr. Arun Kumar, learned counsel for the petitioner is present but no one appears on behalf of the respondent nos.1 and 2 despite valid service of notice to them.
2. Heard the learned counsel for the petitioner.
3. The present writ petition has been filed on behalf of the petitioner against the order dated 21st September, 2016 passed by the learned Civil Judge (Junior Division)-I, Gumla in Title Suit No.27 of 2008, whereby the petition filed by the petitioner under Order VIII Rule 1A(3) C.P.C. for grant of leave to produce the documents has been rejected.
4. The learned counsel for the petitioner has submitted that the plaintiff—Ghura Oraon has filed a Title Suit No.27 of 2008 against Budhwa Oraon and Ors. for the reliefs that Ghardamadnama Deed no. 1096/93 dated 12th May, 1993, Original Mutation Case No.399 R 27/2002-03, Mutation Appeal No.7/2005-06 decided by L.R.D.C., Gumla and Mutation Revision No.17 of 2006 decided by D.C., Gumla all were sought to be declared null and void in regard to the property details of which is given in the schedule at the foot of the plaint of Khata Nos. 25, 122, 126 and 122 situated at village Mahuwatoli, P.S.

Gumla, District-Gumla.

5. The defendant of the Title Suit No.22 of 2008, who is petitioner herein filed the written statement which is Annexure No.2 of the writ petition.
6. It is also further submitted that at the stage of evidence of plaintiff, the defendant moved an application to produce the certain documents which he could not file at the time of filing the written statement. The said application was rejected by the learned trial court vide order dated 21st September, 2016 while the evidence of the defendant has not yet commenced.
7. From the perusal of the impugned order dated 21st September, 2016, it is found that the learned trial court has rejected the application of the defendant to adduce the documents in evidence to prove his defence case on the sole ground that no reason has been assigned by this defendant in regard to his failure to adduce the same at the time of filing the written statement.
8. From the very perusal of the application which is Annexure No. 3 of this writ petition, it is found that the defendant has moved this application with these averments that the documents which he wants to adduce to prove his defence case were not in his knowledge at the time of filing the written statement. Accordingly, prayed to take the same on record.
9. Against this application on behalf of the plaintiff, the rejoinder was filed and copy of the same is Annexure No. 4 of this writ petition in which it is averred that the defendant has not mentioned under what provisions, he wants to produce these documents. The evidence of plaintiff has been closed and if the said documents are being taken on record, the plaintiff would suffer irreparable loss. The said documents are not relevant for the disposal of the suit.
10. It is admitted fact that in the suit, the evidence of plaintiff had been closed at the time of moving the application on behalf of the defendant to take certain documents on record and the

evidence of the defendant has not commenced. **So far as the reason for not producing these documents on behalf of the defendant at the time of filing the written statement is concerned, the same is shown by the defendant in his very application which has not been controverted on behalf of the plaintiff.**

11. So far as the evidence of the plaintiff which has been concluded even after taking the documents on record, the plaintiff would have been given an opportunity to file the rebuttal evidence either documentary or oral as well, so that the rights of the plaintiff may not be prejudiced.
12. The learned trial court while rejecting the application of the plaintiff has not considered this legal position that if the documentary evidence was not filed at the time of written statement despite due diligence, the same may be taken on record at subsequent stage if those documents are necessary for the adjudication of the issues between the parties. Even after the deletion of the provision under Order XVIII Rule 17A of the CPC, the parties may adduce the evidence at later stage of suit showing the sufficient ground not producing them at the time of filing suit or at the time of filing written statement.
- 12.1 The Hon'ble Apex Court in the case of ***Salem Advocate Bar Association Tamil Nadu vs Union of India*** reported in ***AIR 2005 SC 3353*** at paragraph 14 has held as under :

"14. In Salem Advocates Bar Association's case, it has been clarified that on deletion of Order XVIII Rule 17-A which provided for leading of additional evidence, the law existing before the introduction of the amendment, i.e. 1st July, 2002, would stand restored. The Rule was deleted by Amendment Act of 2002. Even before insertion of Order XVIII Rule 17-A, the Court had inbuilt power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order XVIII Rule 17-A did not create any new right but only clarified the position. **Therefore, deletion of Order XVIII Rule 17-A does not disentitle production of evidence at a later stage. On a party satisfying the Court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time the party was leading evidence, the Court may permit leading of such evidence at a later stage on such terms as may appear to be just.**"

13. In view of the above, the impugned order dated 21st September, 2016 passed by the learned Civil Judge (Junior

Division)-I, Gumla in Title Suit No.27 of 2008 needs interference.

14. Accordingly this writ petition is hereby allowed and the aforesaid impugned order passed by the learned trial court is set aside. The application of the defendant in regard to adducing the documentary evidence which is sought to be produced by the defendants is hereby allowed. The plaintiff is also given an opportunity to adduce the rebuttal evidence either documentary or oral. Accordingly, this writ petition stands disposed of.
15. Let a copy of this judgment be communicated to the court concerned through 'FAX'.

(Subhash Chand, J.)

Rohit/Rashmi
AFR