

**(2011) 01 JH CK 0036**

**Jharkhand High Court**

**Case No:** Writ Petition (C) . No. 4253 of 2008

Awadh Sao and Others

APPELLANT

Vs

Smt. Uma Devi and Another

RESPONDENT

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**Date of Decision:** Jan. 28, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 13 Rule 1

**Citation:** AIR 2012 Jhar 13 : (2011) 2 JCR 25

**Hon'ble Judges:** Poonam Srivastava, J

**Bench:** Single Bench

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### **Judgement**

Poonam Srivastav, J.

Heard respective counsel for the parties.

2. The order impugned is dated 08.07.2008 whereby the Sub Judge IV, Ranchi in Title Suit No. 234 of 2003 has refused to grant leave for bringing certain documents on record. According to the learned Counsel, the same was necessary for a just decision of the case.

3. An application for bringing the documents on record was moved at the time when the witnesses of the Defendants were being examined. The submission is that the said documents were filed earlier, but since no leave was obtained, therefore, the same could not be exhibited. The ground for refusing the prayer made on behalf of the Petitioner is that since the documents sought to be exhibited was after the Plaintiff's evidence was complete and secondly that the xerox copy of the said documents were not appended to the written statement before framing of the issues and, therefore, in view of Order 13 Rule 1 C.P.C., since all the documentary evidence were not filed at the time of framing of the issues, no issue could be framed on the said documents. In these circumstances, the prayer of the Petitioner was refused.

4. Counsel for the Petitioner has emphatically stated that since the documents were already filed and kept on record, but the leave was not given, therefore, it could not be said that he had not approached the court at the appropriate time. Learned Counsel has also tried to emphasise that for a just decision, the documents are very necessary and the question of title in eviction suit is being challenged and, therefore, the documents are essential piece of evidence. Reliance has been placed on a decision of this Court in the case of Logen Godsera and Ors. v. Sukhlal Kudada and Anr. W.P.(C) No. 6458 of 2005 Assuming that the Petitioners failed to give the documents to mark it exhibits earlier, but since the Court failed to consider whether the documents are relevant for the purpose of deciding and adjudicating the controversies between the parties, the map sought to be exhibited, it calls for an interference by the High Court.

5. Counsel appearing on behalf of the Respondents has vehemently disputed the contention of the counsel for the Petitioners and has relied on two decisions, one of Rajasthan High Court, as reported in AIR 2003 (Raj) 1 and the other decision is of the Apex Court, as reported in AIR (2002) SC 100. The Respondents have tried to stress that there is no attempt on behalf of the Petitioners to explain the delay in bringing documents on record and also to state unequivocally that in the event the documents are permitted to be exhibited no prejudice will be caused to the other parties.

6. I have gone through the two judgments AIR (2003) Raj. 1 and AIR (2002) SC 100 and after hearing the respective counsel and on consideration of the entire facts and circumstances, I think that the documents which were sought to be exhibited should have been examined closely by the court below and a more rational approach should have been arrived at in scrutinizing the fact that whether the documents were in aid for arriving at a just decision of the case. The learned Counsel has tried to stress that the documents were a record of rights and directly in support of the contention and objections raised in the written statement, therefore, the court was liable to allow the same.

7. I am of the view that since the defence of the Defendants relate to the question of title dispute as well, the courts were liable to allow the documents to be taken on record.

8. Let the parties contest evenly and both the parties should be given an equal opportunity to put forth their claim and the court below shall thereafter sift the evidence and come to a just conclusion. The equities demand that the parties to a proceeding shall be given an equal opportunity of hearing and leading evidence.

9. In view of this, I set aside the order passed by Sub Judge IV, Ranchi dated 08.07.2008 in Title Suit No. 234 of 2003, on a cost of Rs. 2,000/.The cost is to be deposited in the court below and shall be handed over to the Plaintiff.

10. It is made clear that the suit pertains to the year 2003 therefore the court below shall make every endeavour to decide the suit as expeditiously as possible within a period of six months, without granting any undue adjournment. The court shall ensure that the parties are not allowed to delay the proceeding any further.