

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.R. No. 6271 of 2015 (O&M)

Date of decision:- 23.09.2015

Joginder & others

...Petitioner

Versus

Salwinder @ Surinder

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. R.S. Sekhon, Advocate
for the petitioner.

RITU BAHRI J.(Oral)

Petitioners have filed the instant revision petition under Article 227 of the Constitution of India assailing order dated 21.07.2015 (Annexure P-6) passed by learned Addl. District Judge, Ferozepur vide which the application for permission to lead additional evidence under Order 41 Rule 27 read with Section 151 CPC has been dismissed.

Learned counsel for the petitioner submits that the respondent filed a suit in the year 2012 and the petitioners filed their respective written statement and after both the parties concluded their evidence, the trial Court decreed the suit of the respondent on 21.10.2014. The petitioners filed an appeal before the Appellate Court and thereafter filed the above mentioned application on the ground that the deceased Dharminder @ Jagga got admitted in Newton Hospital on 09.09.2011 and discharged from the hospital on the same day and thus the petitioners want to lead additional evidence by way of producing the discharge summary of

Dharminder @ Jagga of Frances Newton Hospital, Ferozepur Cantt by way of summoning the concerned Clerk but their application was dismissed on the ground that D.W.3 scribe of the will in his cross examination had stated that Dharminder @ Jagga remained indoor patient w.e.f 06.09.2011 to 09.09.2011 and after discharged of him from that hospital, he executed the will in question. The will in question is dated 07.09.2011. It was held that this information is with the petitioners when they filed their written and if the application will be allowed, it will cause de-novo trial.

Order 41 Rule 27 CPC reads as under:-

“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.”

The application dismissed vide impugned order dated 21.07.2015 does not require any interference by this Court as essential ingredients of Order 41 Rule 27 are not fulfilled as the petitioners have not been able to show as to why they have not given this information when they filed the written statement.

September 23, 2015
G Arora

(**RITU BAHRI**)
JUDGE