

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

1. RSA No.3155 of 2012 (O&M)
Date of decision : 04.09.2015

Jarnail Singh

...Appellant

Versus

Mohan Singh and ors.

...Respondents

2. RSA No.4774 of 2012 (O&M)
Date of decision : 04.09.2015

Gurmit Singh & another

...Appellants

Versus

Mohan Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Sandeep Khunger, Advocate for the appellant.

Mr. R.K. Arya, Advocate for respondent Nos.1 to 6.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two RSAs bearing No.3155 of 2012, titled as Jarnail Singh Vs. Mohan Singh & ors. filed by defendant No.1 & RSA No.4774 of 2012, titled as Gurmit Singh & anr. Vs. Mohan

Singh and ors. filed by defendant Nos.2 and 3, decided on 04.09.2015.

The appellant is defendant No.1 in the present suit who stated to have filed the appeal against the judgment and decree of the trial Court, whereby the suit of the respondents-plaintiffs had been decreed and plaintiff had been held to be owner of half share in the name of Jarnail Singh s/o Kehar Singh s/o Chuhar Singh with regard to the property described in the suit and further defendants had been enjoined from alienating the suit land. Along with the appeal, the appellant had also filed an application under Order 41 Rule 27 CPC by way of additional evidence seeking indulgence of Lower Appellate Court in producing his birth certificate. But the appeal has been decided without deciding the application.

This Court issued notice of motion on 09.10.2012 after obtaining the report from concerned Court that the said application actually has not been decided. It is now settled law that in case application filed by any of the parties to the lis under Order 41 Rule 27 CPC which remains undecided in appeal & appeal is decided, the matter has to be remanded back to the Lower Appellate Court for adjudication of the lis/appeal afresh.

In support of aforementioned observation, I intend upon ratio decidendi culled out in *Hakam Singh Vs. State of Haryana & ors. 2008(4) RCR Civil 422*.

I would be refrain myself commenting upon merits and demerits of the matter as Lower Appellate Court was enjoined upon obligation to decide the application filed under Order 41 Rule 27 CPC along with appeal. Having not done so, the matter requires to be remanded back to the Lower Appellate Court to decide the appeal, afresh, along with

application under Order 41 Rule 27 CPC.

Accordingly, impugned judgment and decree of Lower Appellate Court dated 05.06.2012 is hereby set aside.

The matter is remanded back to the Lower Appellate Court and Civil Appeal bearing No.269 of 04.03.2010 is restored to its original number.

Lower Appellate Court is directed to decide the appeal along with application under Order 41 Rule 27 in accordance with law preferably within a period of six months from the date of receipt of certified copy of this order.

Accordingly, present appeals are disposed of.

04.09.2015

pawan

**(AMIT RAWAL)
JUDGE**