

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

RSA NO.2409 OF 2013 (O&M)
DATE OF DECISION : 26th FEBRUARY, 2015

Devinder Singh Sandhu

.... Appellant

Versus

Tejinder Singh

.... Respondent

RSA NO.2877 OF 2013 (O&M)

Devinder Singh Sandhu

.... Appellant

Versus

Tejinder Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Akshay Bhan, Senior Advocate with
 Mr. Gurinder S. Sandhu, Advocate for the appellant.
 Mr. Amarjit Markan, Advocate for the respondent.

* * * *

SURINDER GUPTA, J. (ORAL)

1. Heard.
2. At the very outset learned counsel for appellant submits that during pendency of appeal before first Appellate Court an application under Order 41 Rule 27 CPC was moved by the appellant, seeking to produce on record Copy of khasra girdawari and death certificate of Kartar Singh. Reply to that application was filed and the case was posted for arguments on the application as well as on merits. However, the first Appellate Court, without deciding the application, dismissed the appeal filed by appellant.

3. Learned counsel for respondent does not dispute this fact that application under Order 41 Rule 27 CPC was not decided by the first Appellate Court. He submits that the documents sought to be produced by way of additional evidence were looked into by the Courts below and were found to be not relevant.

4. Learned counsel for the appellant has referred to order dated 10.12.2014 passed in ***RSA No.3539 of 1987*** titled ***The Rotary Club Khanna & another vs. Ali Mohammad & Others*** and has argued that in the similar circumstances the judgment of the first appellate Court was set aside and the case was remanded. In that case reliance was placed on observations in the cases of ***Jatinder Singh & anr. versus Mehar Singh & others, 2009(17) SCC 465; Hakam Singh versus State of Haryana and others, 2008(4) RCR (Civil) 422; Malayalam Plantations Ltd. versus State of Kerala and another, 2011 AIR (SC) 559; Ashok Kumar versus Surinder Kumar, 2005(2) RCR(Civil) 557; Charan Singh versus Jagtar Singh, 1999(2) RCR (Civil) 315 ; Ramesh Kumar and another versus Bhagwan Dass Devki Nandan Dharamshala & another, 2012(2) PLR, 534 and State Bank of Patiala versus Des Raj Jain, 2000(3) RCR (Civil) 406***, to impress upon the point that when the application for additional evidence has not been decided, the appeal is required to be remanded with the direction to the first Appellate Court to first decide the application and then decide the appeal afresh.

5. In view of the above cited law, this appeal is accepted, judgment of first Appellate Court is set aside and the case is remanded to the first Appellate Court with direction to decide the application filed by appellant

under Order 41 Rule 27 CPC and the appeal afresh. As RSA No.2877 of 2013 also arises from same common judgment, the same is also disposed of on above terms. It is however made clear that first appellate Court may hear arguments on application and on merit of appeal together, if so required and then proceed to decide both. As it is a very old case, the entire proceedings be completed by the first Appellate Court expeditiously, preferably within three months from 11.03.2015.

6. The parties will appear before the District and Sessions Judge, Ambala on 11.03.2015. The learned District and Sessions Judge may retain the file with him or entrust the same to other competent Court for disposal as per observations above.

7. Photocopy of this order be placed on the record of other connected matter.

26th February, 2015
'raj'

(SURINDER GUPTA)
JUDGE