

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1351 of 2015(O&M)
Date of Decision: November 4, 2015

Amar Singh (deceased) through L.Rs and others

..... Appellants

Versus

Baljinder Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gurcharan Dass, Advocate
for the appellants.

Mr. APS Guliani, Advocate
for the respondent.

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

Amit Rawal, J (Oral)
CM No. 3811-C of 2015

This is an application under Order 22 Rule 3 CPC for grant of permission to appellants No.2 and 3 to sue the appeal on their behalf as well as on behalf of deceased Amar Singh and exemption from filing certified copies of documents (Annexure P-3 and P-4).

The application is allowed as prayed for.

CM No.3812-C of 2015

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 335 days in refiling the appeal is condoned.

The application stands disposed of.

RSA No. 1351 of 2015(O&M)

Mr. APS Guliani, Advocate has put in appearance on behalf of respondent and filed vakalatnama in court today. The same is taken on record.

Learned counsel for the appellants-defendants has raised one legal point that following substantial question of law arise for determination by this Court:-

“Whether the impugned judgment and decree of the lower appellate court without deciding the application under Order 41 Rule 27 would be sustainable.”

In support of his contentions he has relied upon the judgment of Hon'ble Supreme Court in **Malayalam Plantations Ltd. Vs. State of Kerala and another 2011 AIR (SC) 559**. This Court while noticing the aforementioned judgment, summoned record of the courts below vide order dated 23.4.2015.

Learned counsel for the respondent-plaintiff submits that during the interregnum, in pursuance to the judgment and decree, the sale deed in question has already been effected and mutation thereon has also been sanctioned. However, the possession is with the appellants-defendants.

I have seen the record of the lower appellate court from where it is revealed that application under Order 41 Rule 27

CPC was filed. However, there is no adjudication, either independently or in the impugned judgment and decree. This fact has not been disputed by the learned counsel for the respondent.

Without commenting upon the merits and de-merits of the appeal, I deem it appropriate to set aside the judgments and decrees of the lower appellate court and remand the matter back to it to decide the appeal afresh along with application under Order 41 Rule 27 in view of the ratio decidendi culled out in **Malayalam Plantations Ltd.'s case (supra)**.

The parties are directed to appear before the lower appellate court on 1.12.2015.

It is expected that the lower appellate court shall decide the appeal as expeditiously as possible, preferably within a period of three months from the date of receipt of certified copy of this order.

Accordingly, the appeal stands disposed of.

(AMIT RAWAL)
JUDGE

November 4, 2015
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