

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

RSA No.1445 of 2015 (O&M)

Date of decision: 22.09.2015

Rishi Pal

... Appellant

Vs.

The Gram Panchayat of village Sirsi & others

... Respondents

RSA No.2136 of 2015 (O&M)

Sohan Lal and others

... Appellants

Vs.

The Gram Panchayat of village Sirsi & others

... 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. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate
for the appellant (in RSA No.1445 of 2015).

Mr. Randeep Singh, Advocate
for the appellants (in RSA No.2136 of 2015).

Mr. Narender Pal Bhardwaj, Advocate
for respondents No.1 and 2 (in both appeals).

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two regular second
appeals bearing Nos.1445 and 2136 of 2015.

Mr. Ashish Aggarwal, learned Senior counsel assisted by
Mr. Kulwant Singh, Advocate; and Mr. Randeep Singh, Advocate

submit that the judgment and decree of the trial Court was assailed by filing an appeal, under Section 96 of the Code of Civil Procedure, along with same an application, under Order 41 Rule 27 CPC, seeking indulgence of the lower Appellate Court for placing on record certain documents, as noticed, was also filed. The lower Appellate Court without deciding the said application, has decided the appeal. In support of the contention, relied upon the judgment of the Hon'ble Supreme Court in **Malayalam Plantations Ltd. vs. State of Kerala and another 2011 AIR (SC) 559.**

Mr. Narender Pal Bhardwaj, learned counsel appearing on behalf of respondents No.1 and 2 submits that he does not dispute the fact that the application has not been decided but in view of Section 13 of the Punjab Village Common Land Act, 1961, as applicable to Haryana, the suit was not maintainable.

I have heard learned counsel for the parties and gone through the zimni orders from the date when the appeal was instituted till the adjudication of the same, there is no reference, that lower Appellate Court decided the application separately. Even on perusal of the impugned judgment and decree, there is no reference to the application, rather the lower Appellate Court, in support of its finding, categorically averred that no such documents have been placed on record, before it, whereas, according to the learned counsel for the appellants, the documents sought to be placed on record, by way of additional evidence, were/are essential and

necessary for adjudication of the appeal.

In view of the ratio decidendi culled out by the Hon'ble Supreme Court in Malayam Plantations Ltd.'s case (supra), the impugned judgment and decree is not sustainable and the matter is liable to be remanded back. Accordingly, the impugned judgment and decree of the lower Appellate Court is set aside and the matter is remanded back to it. In essence, the appeal is restored to its original number. The lower Appellate Court is directed to decide the appeal along with an application filed, under Order 41 Rule 27, CPC, in accordance with law, preferably within a period of eight months from the date of receipt of certified copy of this order.

The appeals are allowed, in the aforementioned terms.

(AMIT RAWAL)
JUDGE

September 22, 2015
savita