

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1135 of 2016

Date of Decision.15.02.2016

Ram Singh and others

.....Petitioners

Vs.

Ashok Kumar and others

.....Respondents

Present: Mr. Arvind Singh, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. There is no reason for interference with the order passed by the Court below which has adopted a procedure which is not proper but still having gone through the documents which are brought on record. I do not think any intervention is called for.

2. In a suit relating to claim for easementary rights over the defendants' property, the defence was that there existed no right of way; that in the document of purchase by the plaintiff, there is no reference of right of way over the defendants' property and that the government passage has been provided in the sale deed made to the plaintiff and he has no need for access over the defendants' property. The trial Court has accepted the defence and dismissed the suit.

3. In the appeal filed by the plaintiff, the plaintiff has filed application under Order 41 Rule 27 CPC that relate to the documents that were prior to the suit filed in the year 2004 which the plaintiff

would have surely known that they were available if they were relevant for his case. The documents are: (i) a decree obtained by the plaintiff against the third party; (ii) report prepared by a Class IV official in the Canal Department and (iii) orders passed by the revenue officials and some entries relating to the plan and other relevant documents. If there was justification for reception of these documents, the Court should have considered them along with the judgment and ought not to have passed order in application under Order 41 Rule 27 CPC independently. The Court shall know that an application under Order 41 Rule 27 CPC cannot be disposed of independently, for Order 41 Rule 28 CPC prescribes a procedure of what the Court shall do if the application is to be allowed and any document is to be received. There is a legal imperative that the Court passes an order in application under Order 41 Rule 27 CPC along with the appeal and not independently thereof.

4. Having said that I have considered that the documents which are now sought to be introduced as additional evidence cannot cause any serious prejudice, for the defendants will also have right to plead that none of the documents relied on by the plaintiff will have any practical relevance. They are entitled to say that judgments not inter-parties cannot bind them. Judgments not inter-parties and the revenue records or entries must all be examined in the context of the defendants' objection of whether there was any right to be created against the defendants' interest and whether the order would bind them. The issue of relevance shall be reserved for consideration at the stage of disposal of appeal.

5. Although order passed by the Court below was not in

accordance with the law of disposing of the application under Order 41 Rule 27 CPC independently of the appeal, I will find no cause for intervention, for ultimately there is no serious prejudice that the petitioners could complain of as having been caused to them.

6. The counsel also says that the petitioners should have opportunity to raise objection to the admissibility of the documents. I see no weight in the argument but the issue of reference is surely to be considered while disposing of the appeal. The order passed by the Court below is maintained but with the above observations. The revision petition is disposed of.

(K. KANNAN)
JUDGE

February 15, 2016
Pankaj*