

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

C.R. No.4429 of 2016

Date of Decision.15.07.2016

Rishi Pal

.....Petitioner

Vs.

Gram Panchayat of Village Sirsi and others

.....Respondents

Present: Mr. Yogesh Chaudhary, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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)

The petitioner-plaintiff instituted a suit for declaration and permanent injunction which was dismissed by judgment and decree dated 24.05.2011 against which two appeals were filed. The civil appeal in C.A. No.33 of 2014 was filed by the plaintiff whereas co-plaintiff's civil appeal bore No.327 of 2014. The aforementioned appeals were dismissed vide judgment and decree dated 09.03.2015. Against that judgment, RSA No.1445 of 2015 was filed at the instance of petitioner-plaintiff whereas at the instance of the co-plaintiffs, RSA No.2136 of 2015 was filed. Both the appeals were disposed of vide judgment dated 22.09.2015 on the ground that the lower Appellate Court has wrongly decided the appeals while the application under Order 41 Rule 27 CPC remained undecided and the cases were remanded back to the lower Appellate Court to decide the application filed for reception of additional evidence along with the appeals.

Mr. Yogesh Chaudhary, learned counsel for the petitioner

submits that according to him, application under Order 41 Rule 27 CPC had already been decided vide order dated 09.03.2015 and therefore, it was inadvertent mistake on behalf of the appellant which resulted into remand order. The appeals are still pending and therefore, the order dismissing the application has been challenged. He submits that the lower Appellate Court ought not to have decided the application independently of the memorandum of appeal in view of the law laid down by the Supreme Court in **Malayalam Plantations Ltd. Vs. State of Kerala and another AIR 2011 SC 559.**

I have heard the learned counsel for the petitioner and appraised the paper book. I am in agreement of the submission of the counsel for the petitioner and the *ratio decidendi* culled out in the judgment of the Supreme Court in **Malayalam Plantations Ltd.** (supra). No doubt, this Court was not apprised of the adjudication of the order dated 09.03.2015 but without commenting on the aforementioned fact, lower Appellate Court ought not to have decided the application for additional evidence separately. It is settled law that the application for additional evidence has to be decided with the appeal. Since the appeal after remand is stated to be pending, I, without commenting on the merits and demerits of the order under challenge, set aside the order and direct the lower Appellate Court to decide the application for additional evidence along with the appeal in accordance with law.

The revision petition is disposed of with the above direction.

(AMIT RAWAL)
JUDGE

July 15, 2016
Pankaj*