

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3489 of 2011 (O&M)

Date of Decision: 15.03.2016

Amandeep Singh

... Appellant(s)

Versus

Sohan Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

- | | | |
|----|---|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Vikram Anand, Advocate
for the appellant(s).

Mr. Rajbir Wasu, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present regular second appeal against judgment & decree dated 15.4.2011, passed by learned Additional District Judge, Kapurthala, whereby appeal filed by plaintiff-Amandeep Singh was dismissed.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

Relevant facts of the case that plaintiff had filed suit for permanent injunction against the defendants and the Court of first

instance dismissed the suit. First Appellate Court dismissed the appeal and as such present regular second appeal before this Court.

Learned counsel for the appellant mainly submitted that an application under Order 41 Rule 27 read with Section 151 CPC was filed by the appellant/plaintiff before the First Appellate Court, for allowing him to produce on record the certified copy of sale deed dated 28.2.2007 executed by Shohan Singh in favour of Yadwinder Singh and Balwinder Singh. The said sale deed was essential and vital piece of evidence for proper adjudication of the case. Even reply to the said application was filed by the respondents/defendants. However, the said application was not decided by learned Additional District Judge, Kapurthala and passed the judgment & decree dated 15.4.2011. More so, the Superintendent of the office of District & Sessions Judge, Kapurthala submitted his report, which reads as under"

"Sir,

It is therefore submitted that as per the Civil Appeal No. 12 dated 27.2.2009 decided on 15.4.11 titled as Amandeep Singh Vs. Sohan Singh, decided by Smt. Sunita Kumari, Additional District Judge, Kapurthala containing 64 pages GNOC 388, 27.5.11. No separate order dated 15.4.11 passed on application under order 41 rule 27 CPC attached with the appeal file.

*Submitted
Sd/-
Mkumar
AEC/Copyist
05.8.11*

*Return the original to the applicant as per
above said report.*

*Sd/-
Superintendent
District and Sessions Judge
Kapurthala.
05 AUG 2011"*

Learned counsel for the appellant submitted that as per view taken by Hon'ble the Supreme Court in case ***Sanjiv Goel v. Avtar Singh Sandhu 2006(9) SCC 748***, in case no order was passed on an application under Order 41 Rule 27 CPC for additional evidence, the matter is required to be remanded back to the District Judge for decision of the appeal as well as of the application under Order 41 Rule 27 CPC in accordance with law.

While arguing on that point, learned counsel for the respondents has fairly conceded that no such order was passed on an application under Order 41 Rule 27 CPC dated 3.5.2010. But the applicant was seeking permission to lead additional evidence, which was not relevant at all for the purpose of decision of the appeal and as such the same is not going to affect merits of the case in any manner and the contention raised by learned counsel for the appellant is legally not tenable.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that admittedly application dated 3.5.2010 under Order 41 Rule 27 CPC remained pending before the Court of learned Additional District Judge, Kapurthala and no order was passed thereon, though first appeal was

decided by learned Additional District Judge, Kapurthala. Needless to mention that such an application for additional evidence was essential and most relevant for the decision of the main appeal, before or at least at the time of its decision.

In view of the above said fact and as per view taken by Hon'ble the Apex Court in ***Sanjiv Goel's case*** (*supra*), judgment & decree dated 15.4.2011, passed by learned Additional District Judge, Kapurthala, are set aside and the matter is remanded back to the District Judge, Kapurthala for assigning the case to the appropriate Court for decision of the appeal as well as application under Order 41 Rule 27 CPC, filed by the appellant, on merits in accordance with law. Accordingly, present regular second appeal stands disposed of.

(Shekher Dhawan)
Judge

March 15, 2016

"DK"