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

**RSA No.2245 of 2012 (O&M)
Date of decision : 22.04.2016.**

Ram Rattan

..... Appellant

VERSUS

Amar Nath

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. K.S. Dadwal, Advocate
for the appellant.

Mr. Sandeep Bansal, Advocate
for the respondent.

AMOL RATTAN SINGH, J. (Oral)

Learned counsel for the appellant points to the 'zimni' orders of the learned lower Appellate Court, from the record that has been summoned, to submit that despite an application under Order 41 Rule 27 CPC and Order 26 Rule 9 CPC having been filed, by the appellant-Ram Rattan (in RSA No.2245 of 2012), seeking to lead additional evidence in the form of an allotment letter, 'aks shajra' and jamabandi, and reply thereto also having been filed by the respondent herein i.e. Amar Nath, the said application was never finally decided, even at the time of pronouncement of the judgment dated 08.05.2012, in the first appeal filed by the appellant.

This factual position is obviously not disputed by the learned counsel for the respondent, being a part of the record.

2. Learned counsel for the appellant, Mr. Dadwal also cites a judgment of the Supreme Court in Jatinder Singh & another Vs. Mehar Singh & others (2009) 17 SCC 465, to submit that without deciding the application under Order 41 Rule 27 CPC, the main appeal could not have been decided.

On the other hand, learned counsel for the respondent, though could not dispute the ratio of the law laid down, however, submits that as a matter of fact, the said application under Order 41 Rule 27 CPC was obviously not decided because it was not pressed by the counsel for the appellant before the lower Appellate Court.

3. Whereas what the learned counsel submits may not be without reasoning, however, in view of the law enunciated in the aforesaid and other judgments to that effect, the contention cannot be accepted.

4. Learned counsel for the respondent further submits that if the matter is to be remitted to the learned lower Appellate Court, that Court may be directed to decide the appeal finally within a time bound manner.

5. Having heard learned counsel for the parties and having read the judgment of the hon'ble Supreme Court cited hereinabove, it is found even from a perusal of the

record of the learned lower Appellate Court, that the aforesaid application moved by the appellant-Ram Rattan, under Order 41 Rule 27 CPC, was not decided by that Court, either before or at the time of deciding the appeal before it.

Consequently, the matter is remitted to the Lower Appellate Court, to take a decision first on the application moved under Order 41 Rule 27 CPC and thereafter to proceed to decide the appeal afresh. The judgment of the Additional District Judge, Hoshiarpur, dated 08.05.2012, is set aside and the matter is remitted as aforesaid. That Court would, after deciding the application under Order 41 Rule 27 CPC, proceed to decide the appeal within a period of six months from the date of its first listing.

6. Since the matter is being remitted again to the lower Appellate Court, it would be taken up from the stage of the filing of the reply to the application under Order 41 Rule 27 CPC, with all pleas available to both sides, to raise before that Court, in accordance with law.

Now to come up before the lower Appellate Court on 25.05.2016.

April 22, 2016
Ramandeep Singh

(AMOL RATTAN SINGH)
JUDGE