

RSA No. 4326-2012

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

RSA No. 4326-2012 (O & M)

Date of Decision: 08.02.2016

Harpreet Singh and others

... Appellant(s)

Versus

Ram Singh

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

1) Whether Reporters of the 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 ?

Present: Mr. Dhirender Chopra, Advocate,
for the appellants.

Mr. M.S.Khaira, Sr. Advocate with
Mr. D.S.Randhawa, Advocate,
for the respondent.

Paramjeet Singh Dhaliwal, J. (Oral)

This regular second appeal by the defendants is directed against the judgment and decree dated 23.11.2009 passed by learned Additional Civil Judge (Sr. Divn.), Moga whereby suit for possession, injunction and recovery filed by the respondent-plaintiff has been decreed and against the judgment and decree dated 06.08.2012 passed by learned Additional District Judge, Moga whereby appeal filed by the appellants-defendants has been dismissed.

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For convenience sake, hereinafter, reference to parties is being made as per their status in the suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff filed suit for possession as owner of land measuring 7 kanals 12 marlas by way of specific performance of the agreement to sell dated 06.01.2005 with consequential relief of permanent injunction. It was averred in the plaint that the defendants entered into an agreement to sell the suit land with the plaintiff vide agreement dated 06.01.2005 for a total sale consideration of Rs.1,90,000/- out of which the defendants received Rs.31,000/- as earnest money at the time of the agreement. The stipulated date for execution and registration of the agreement was fixed as 07.02.2005. On the stipulated date, the plaintiff reached the office of Sub-Registrar, Moga to get the sale deed executed and registered, but the defendants did not come there to perform their part of contract. Thereafter, the plaintiff got his presence marked by moving an application before the registering authority. The defendants threatened to dispose of the suit property to some other person except the plaintiff, therefore, the suit was filed.

Upon notice, the defendants resisted the suit and filed written statement taking various preliminary objections. On merits, it was averred that the alleged agreement dated 06.01.2005 is a forged and

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fabricated documents. The plaintiff had already prepared forged and fabricated agreements dated 09.07.2002, 06.07.2004 and 06.01.2005. The defendants did not execute any agreement in favour of the plaintiff. Other averments in plaint were denied and dismissal of suit was prayed for.

Replication was filed. On the basis of pleadings of the parties, the Court of first instance framed following issues:

- “1. *Whether the plaintiff is entitled for possession as owner of 7 kanals 12 marlas by way of specific performance of the agreement of sale dated 06.01.2005 on the ground, as prayed for? OPP*
2. *Whether the plaintiff is entitled for permanent injunction on the ground, as prayed for?OPP*
3. *Whether the plaintiff is entitled for the recovery of Rs.62,000/- on the ground, as prayed for? OPP*
4. *Whether suit of the plaintiff is not maintainable?OPD*
5. *Whether the plaintiff has no cause of action to file the preset suit?OPD*
6. *Whether the plaintiff has no locus standi to file the present suit?OPD*
7. *Whether the alleged agreement is forged and fabricated documents?OPD*
8. *Relief.*

After appreciating the evidence, the Court of first instance decreed the suit for possession as owner of the suit land by way of

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specific performance of the agreement to sell dated 06.01.2005 on payment of balance sale consideration and the defendants were directed to execute the sale deed in favour of the plaintiff as per terms of the agreement to sell within a period of two months after receiving the balance sale consideration. Feeling aggrieved, the defendants preferred an appeal along with an application for leading additional evidence. However, the learned lower Appellate Court dismissed the appeal vide impugned judgment and decree dated 06.08.2012 without deciding the application for leading additional evidence. Hence, this regular second appeal.

Learned counsel for the appellants has referred to following substantial questions of law, formulated in the grounds of appeal ,for consideration by this Court:

- (a) *Whether the courts below have misread and misinterpreted the evidence brought on record?*
- (b) *Whether the judgments and decrees of the courts below are based on conjectures and surmises?*
- (c) *Whether the judgments and decrees of the courts below are perverse and are liable to be set aside?*
- (d) *Whether the learned Additional District Judge, Moga could have decided the appeal without deciding application under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 dated 26.04.2011 Annexure A-1?*

I have heard learned counsel for the parties and perused the record.

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Learned counsel for the appellants has vehemently contended that the learned Lower Appellate Court has decided the appeal without deciding the application under Order 41 Rule 27 CPC for leading additional evidence whereby the applicants wanted to produce documents i.e. two forged and fabricated agreements to sell dated 06.07.2004 and 09.07.2002 in support of their case.

Learned senior counsel for the respondent candidly admits that application under Order 41 Rule 27 CPC has not been decided by the lower Appellate Court on merits.

I have considered the contentions of learned counsel for the parties.

Admittedly, application moved in appeal for leading additional evidence has not been decided by the lower Appellate Court. The first Appellate Court ought to have passed an order in the application under 41 Rule 27 CPC. It was incumbent on the part of the lower Appellate Court to consider the application under Order 41 Rule 27 CPC either separately or at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing on the issues involved. In this regard, reliance can be placed upon *Malayalam Plantations Ltd. vs. State of Kerala* 2011 (1) CTC 122.

In *Namdeo vs. Tukaram* 2008(72) ALR 918, the Hon'ble Supreme Court has held as under:

“4. *It is true that the first appellate Court only*

allowed "production of documents" and did not make any order receiving them as additional evidence. The documents produced by the appellant were all certified copies of crops statement, record of rights, index of lands and revenue proceedings. The appellant was apparently under the impression that his application for additional evidence had been allowed and the documents had been accepted as evidence. Order 41 Rule 27 Civil Procedure Code contemplates that wherever additional evidence is allowed to be produced by the appellate Court, the court should record reasons for its admission. We find that the first appellate Court did not reject the application under Order 41 Rule 27 Civil Procedure Code, nor did it assign any reasons while recording that only production of the documents was allowed. We are of the view that the procedure adopted was incorrect. The first appellate Court ought to have passed an order in respect of the application under Order 41 Rule 27 Civil Procedure Code, either allowing or rejecting the application. The first appellate Court has considered the application as if it was one under Order 13 Rule 1 CPC and not under Order 41 Rule 27 Civil Procedure Code. The High Court ought to have therefore interfered in the matter by raising an appropriate question of law. It failed to do so. The judgments, therefore, call for interference."

In view of law laid down in supra, the judgment and decree dated 06.08.2012 is set aside and the lower Appellate Court is directed to decide the matter afresh including the application under Order 41 Rule 27 CPC after affording adequate opportunity of hearing to both the

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parties, preferable within a period of 9 months from the date of receipt of certified copy of this order, in accordance with law.

Parties through their counsel are directed to appear before the learned lower Appellate Court on 14.03.2016.

Disposed of.

08.02.2016

kanchan/parveen kumar

(Paramjeet Singh Dhaliwal)
Judge