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

**RSA-5077-2012 (O&M)
Date of decision : 13.12.2016**

Dinesh Chander and another

... Appellants

Versus

Kailashwati

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ritesh Pandey, Advocate
for the appellants.

None for the respondent.

AMIT RAWAL, J. (ORAL)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby the suit for declaration claiming ownership of Kothi no.17, measuring 13 marlas situated at Dosandha Singh Road, Amritsar by seeking rectification in the sale deed dated 09.03.1981, has been dismissed by both the Courts below.

Mr. Ritesh Pandey, learned counsel for the appellants-plaintiffs submits that during the pendency of the appeal, before the lower Appellate Court an application under Order 41 Rule 27 CPC for placing on record the certain documents showing the ownership of appellants-plaintiffs was moved, but the same was remained undecided.

There is no representation on behalf of the respondent-defendant despite having been served through publication.

I have heard learned counsel for the appellants-plaintiffs and appraised the paper book and as well as the record of Lower Appellate

Court.

Admittedly the application aforementioned was filed along with the appeal which fact is noticed in the order dated 25.08.2011 and thereafter, the Court had been adjourning the matter to hear the arguments on the application and as well as on the appeal and ultimately, dismissed the appeal on 16.05.2012 without deciding the application. In view of the ratio decidendi culled out by the judgment of the Hon'ble Supreme Court in *“Malayalam Plantations Ltd. Vs. State of Kerala and another AIR 2011 SC 559”*, the application for additional evidence has to be decided along with the appeal and therefore, the matter is required to be remitted back to the lower Appellate Court to decide the appeal afresh along with application stated to be pending.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is hereby set aside and the matter is remitted back to the lower Appellate Court and the lower Appellate Court, after serving the respondent(s)-defendant(s), shall decide the appeal afresh along with the application in accordance with law as expeditiously as possible.

Learned counsel for the parties and as well as the parties are directed to appear before the lower Appellate Court on 12.01.2017.

With the aforesaid observations, the appeal stands disposed of.

13.12.2016

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**