

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

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RSA 2785 of 2013 (O&M)
Date of decision: 03.05.2016

Reshma Devi and others

..... Appellants

Versus

Om Parkash and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. C M Munjal, Advocate
for the appellants

Mr. R K Girdhar, Advocate
for the respondents

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J. (Oral)

The present appeal has been directed against the judgment and decree dated 30.03.2013 passed by the Additional District Judge, Ferozepur whereby the appeal preferred by Hans Raj and others against the judgment and decree dated 14.09.2010 passed by the Court of Additional Civil Judge (Senior Division) Abohar, decreeing suit of the plaintiffs/respondents has been rejected and as a consequence, the findings recorded by the trial Court have been affirmed.

Counsel for the appellants has submitted that during pendency of appeal, an application under Order XLI Rule 27 read with Section 151 of

Code of Civil Procedure (in short 'CPC') seeking permission to produce on record notarized copy of *Bahi leaf* dated 03.01.1958 stated to be thumb marked by Sumer Chand ancestor of the respondents/plaintiffs along with Ram Chand and Prabh Dayal witnesses was filed. The contesting party filed reply to the application dated 02.03.2012 but the Court in appeal did not dispose of the application while deciding the appeal vide judgment and decree dated 30.03.2013, sufficient to set aside the judgment and decree passed by the Court in appeal and the matter may be remitted to the first appellate Court for decision of the appeal afresh by deciding the application for additional evidence.

Counsel for the respondents has not disputed the factual averments made by counsel for the appellants but would submit that the document sought to be produced by way of additional evidence has got no material bearing on merits of the case.

I have heard counsel for the parties and perused the records.

The substantial question of law that arises for adjudication is *'whether the appellate Court was competent to dispose of the appeal without deciding the application filed by the appellants under Order XLI Rule 27 read with Section 151 CPC for adducing additional evidence?'*

The controversy raised in the present appeal is no longer *res integra* and is squarely covered by the judgment of Hon'ble the Supreme Court in ***Jatinder Singh and another v. Mehar Singh and others (2009) 17 SCC 465***. It is enjoined upon the appellate Court to decide the application for additional evidence before deciding the appeal on merits. In this view of the matter, I find merit in the contention of counsel for the appellants that the judgment and decree passed by the Court in appeal is liable to be set

aside on this score alone.

For the foregoing reasons, the appeal is allowed, the judgment and decree passed by the Court in appeal is set aside and the matter is remitted to the first appellate Court for decision of the appeal a fresh after disposing of the application for additional evidence, in accordance with law.

Nothing stated in this order shall be construed as an expression of opinion on merits of the case. Parties through their counsel are directed to appear before the appellate Court on 31.05.02016. The Court is directed to dispose of the appeal within a period of three months from the date of parties putting in appearance before it.

(Rekha Mittal)
Judge

03.05.2016
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