

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

(1) RSA-1103 of 2014 (O&M)

Darbara Singh

...Appellant

Versus

Gardaur Singh and others

...Respondents

(2) RSA-2937 of 2014 (O&M)

Gardaur Singh

...Appellant

Versus

Darbara Singh and others

...Respondents

(3) RSA-2938 of 2014 (O&M)

Gardaur Singh

...Appellant

Versus

Darbara Singh and others

...Respondents

Date of decision: 14.03.2016

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. S.K. Chawla, Advocate for the appellant.
(in RSA-1103-2014).

Mr. KB Raheja, Advocate for the appellant
(in RSA Nos. 2937 and 2938 of 2014)

Jitendra Chauhan, J. (Oral)

The above noted appeals are being disposed of by this single judgment, having arisen out of the common judgments.

2. The plaintiff/appellant filed an application dated 15.11.2010, under Order 41 Rule 27 CPC before the 1st Appellate Court. The learned counsel for the appellant in RSA Nos.2937 and 2938, submits that no order was passed on the above said application. The appellant moved an application for obtaining the certified copy of the order passed in the application, however the same was returned with the remarks that date of order has not been mentioned.

This Court has perused the record. On perusal of the same, it appears that no order was passed on the application moved under Order 41 Rule 27 CPC. The Hon'ble Supreme Court in **Malayalam Plantations Ltd. Vs. State of Kerala and another**, 2011(3) RCR (Civil) 609 in para Nos. 9 and 10 observed as under:-

9) We are not inclined to go into the validity or acceptability of those documents/materials filed by both sides before the High Court. Order 41 of CPC speaks about procedure in respect of disposal of appeals from original decree. Among various rules, we are concerned about Rule 27 which reads as under:-

"27. Production of additional evidence in Appellate Court.--(a) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if--

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

10) In view of the above provision, in our opinion, when an application for reception of additional evidence under Order 41 Rule 27 of CPC was filed by the parties, it was the duty of the High Court to deal with the same on merits. The above principle has been reiterated by this Court in *Jatinder Singh & Anr. Vs. Mehar Singh & Ors.* AIR 2009 SC 354 and *Shyam Gopal Bindal and Others vs. Land Acquisition Officer and Another*, (2010) 2 SCC

316.

The learned counsel for co-appellant/respondent No.1 states that he has no objection if the matter is remanded back for fresh adjudication after first deciding the application under Order 41 Rule 27 CPC, as envisaged in Malayalam case (supra).

In view of the above, the appeals are remanded back to the 1st Appellate Court for fresh adjudication. As the suit was filed in the year 2005, the 1st Appellate Court is directed to make earnest efforts to decide the matter at the earliest. The parties, through their counsel are directed to appear before the District Judge on 03.05.2016. The records of the Courts below be sent back immediately.

14.03.2016

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(JITENDRA CHAUHAN)
JUDGE