

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 62 of 2016(O&M)

Date of Decision:19.2.2016

Joginder Singh

---Appellant

vs.

Gurdial Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Pritam Saini, Advocate
for the appellant

Ms. Monika Arora, Advocate
for respondents No. 1(i)(iii)(iv) and (v)

Mr. Gaurav Gupta, Advocate
for respondent No. 2

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.

The present appeal has been directed against the judgment and decree dated 5.12.2015 passed by the District Judge, Ambala, dismissing the appeal against the judgment and decree dated 11.2.2014 passed by the trial court whereby the suit filed by the plaintiff/appellant was ordered to be

dismissed.

The sole submission made by counsel for the appellant is that the appellate court decided the appeal without deciding an application under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure (in short “CPC”) filed by the appellant, the judgment and decree passed by the appellate court is liable to be set aside and the matter may be remitted to the court below for disposal of the application and the appeal afresh.

Counsel for the contesting respondent No. 2 has not disputed that the application filed by the appellant for additional evidence was not disposed of while the appeal was decided by the appellate court. However, it is submitted that even if the application filed by the appellant is allowed and he is permitted to adduce additional evidence, it would be of no consequence to have any bearing on the findings recorded by the trial court.

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

The substantial question of law that arises for adjudication is *“whether it was incumbent upon the appellate court to decide the application for additional evidence before deciding the appeal on merit?”*

Concededly, the appellant filed an application for additional evidence by invoking order XLI Rule 27 read with Section 151 CPC. The reply to the application was filed by respondent No. 2 and the same was adopted by respondents No. 3 to 6. The appellate court adjourned the case to 17.11.2015 for arguments on the application as well as appeal. Counsel for the contesting respondent has not disputed that the appellate court heard the appeal on merits but did not dispose of the application for additional evidence. The appellate court is under a legal obligation to decide the

application for additional evidence before deciding the appeal. In this context, reference can be made to judgment of Hon'ble the Supreme Court of India **Jatinder Singh and another vs. Mehar Singh and others (2009) 17 SCC 465**. In this view of the matter, the question formulated hereinbefore is answered in favour of the appellant and against the respondent.

For the foregoing reasons, the appeal is partly allowed, the judgment and decree passed by the first appellate court dated 5.12.2015 is set aside and the matter is remitted to the appellate court for disposal of the application for additional evidence and the appeal afresh. However, it is made clear that the Court has not examined the merits as to whether the application for additional evidence under Order 41 Rule 21 CPC should be allowed or not, which shall be decided by the first appellate court, in accordance with law.

(Rekha Mittal)
Judge

19.2.2016
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