

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

RSA No.2702 of 2014 (O&M)

Date of decision : 01.12.2016

Abad Gir

.....Appellant

Versus

Raj Gir and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Appellant in person with
Mr. Tarunveer Vashisth, Advocate for the appellant.

Mr. Rajinder Goyal, Advocate for respondent No.1.

Mr. K. K. Saini, Advocate for respondent No.2.

DARSHAN SINGH, J. (Oral)

Appellant Abad Gir and Shri Tarunveer Vashisth, Advocate
have made the joint statement, which is reproduced as under : -

*“That all the respondents except respondents No.1 Rajgir and
respondent No.2 Dalvinderger are not the necessary parties in this
matter and we gave up all other respondents in the present case
except respondents No.1 & 2.”*

Thus, the remaining respondents, except respondents No.1 & 2, stand
given up.

2. Learned counsel for the appellant contended that the

appellant has moved an application under Order 41 Rule 27 of the Code of the Civil Procedure, 1908 (for short the “CPC”) before the learned first appellate Court on 23.01.2013. Even the reply to the said application was filed by the opposite party on 15.05.2013, but the appeal has been decided by the learned first appellate Court without deciding the said application for additional evidence. He contended that as the application moved by the appellant has not been decided, the impugned judgment suffers from inherent irregularity and illegality. He relied upon cases ***Jatinder Singh & Anr. Minor through Mother Vs. Mehar Singh & Ors. 2009(1) Civil Court Cases 211, Sham Lal & Sons etc. Vs. Rajiv Kumar 2010(2) Civil Court Cases 216*** and ***Vinod Kumar Mittal Vs. Girdhari Lal Saroa 2010(2) Civil Court Cases 267.***

3. The fact regarding moving the application for additional evidence by the appellant before the first appellate Court and its non-decision could not be disputed by learned counsel for the respondents.

4. Thus, the fact remains that the appellant has moved an application for additional evidence under Order 41 Rule 27 CPC for additional evidence before the first appellate Court on 23.01.2013. Even the reply to that application was filed on 15.05.2013. The perusal of the impugned judgment dated 02.01.2014 passed by the learned first appellate Court shows that the said judgment has been passed without deciding the application for additional evidence moved by the appellant. Thus, the impugned judgment suffers from inherent irregularity and patent illegality. So, the impugned judgment cannot be sustained in the eyes of law.

Reference can be made to cases ***Jatinder Singh & Anr. Minor through Mother Vs. Mehar Singh & Ors.*** (supra), ***Sham Lal & Sons etc. Vs. Rajiv Kumar*** (supra), and ***Vinod Kumar Mittal Vs. Girdhari Lal Saroa*** (supra).

5. Thus, in these circumstances, present appeal is hereby allowed. The impugned judgment dated 02.01.2014 passed by the learned first appellate Court is hereby set aside. The case is remitted to the learned first appellate Court to decide the appeal afresh along with the application moved by the appellant for additional evidence.

6. The parties are directed to appear before the learned first appellate Court on 12.01.2017.

01.12.2016

sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No