

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

**CR No. 1048 of 2016(O&M)**

**Date of decision: 5.9.2017**

Kamlesh and others

....Petitioners

VERSUS

Darshana Devi and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Hawa Singh Hooda, Senior Advocate with  
Mr. Vivek Gupta, Advocate for the petitioners.

Mr. Vivek Khatri, Advocate for respondents No.1 and 2.

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**REKHA MITTAL, J.**

The present petition directs challenge against order dated 30.11.2015 passed by the Additional District Judge, Jhajjar whereby appeal filed by the respondents/plaintiffs against the judgment and decree dated 28.02.2013 passed by the Additional Civil Judge (Senior Division), Bahadurgarh has been disposed of by allowing an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (in short 'CPC') subject to payment of costs of Rs.10,000/- and the matter has been remitted to the trial Court for adjudication afresh.

Counsel for the petitioners/defendants has submitted that the respondents/plaintiffs filed suit for declaration and permanent injunction claiming themselves to be joint owners in possession of agricultural land measuring 72 kanals 6 marlas situated within the revenue estate of village Kharhar on the premise that Shama – defendant No.1 inherited the said land from his father and his father inherited the same from his father and so

on, therefore, the property is ancestral in the hands of Shama and other coparceners have right by birth in the suit property. The trial Court framed four issues for adjudication on 29.09.2010. The parties were permitted to adduce evidence in support of their respective claims. It is further argued that when the case was fixed for adducing evidence in rebuttal by the respondents/plaintiffs, they filed an application under Section 151 CPC for allowing them to adduce additional evidence. The application was allowed by the trial Court vide order dated 24.12.2012 but subject to the condition that the documents sought to be tendered into evidence shall be in rebuttal on the issues of which the onus was on the defendants i.e. the issues in regard to maintainability and cause of action. It is further submitted that since the plaintiffs were permitted to produce documents Ex.P4 to Ex.P6 and its Hindi translation Ex.P4/T to Ex.P6/T only for the purpose of rebuttal qua issues No.3 and 4, the trial Court has rightly ignored the documents while deciding issues No.1 and 2 pertaining to merits of the case and eventually dismissed suit of the respondents/plaintiffs. It is argued with vehemence that the Court in appeal without appreciating the order dated 24.12.2012 in right spirit has allowed application under Order 41 Rule 27 CPC and remitted the matter to the trial Court to decide the suit afresh even without setting aside findings recorded by the trial Court on issues No.1 and 2.

It is further argued that application filed by the respondents/plaintiffs under Order 41 Rule 27 read with Section 151 CPC does not satisfy the requirements of clause (a) and (aa) of Rule 27 of Order 41 CPC, therefore, order passed by the Appellate Court allowing application for additional evidence cannot be allowed to sustain and liable

to be set aside and the matter may be remitted to the Court in appeal for decision of the appeal on merits.

Counsel representing the respondents/plaintiffs, on the contrary, has supported the impugned order with the submissions that as the documents Ex.P4 to Ex.P6 are of unimpeachable credibility being copies of jamabandis and mutation and the same are already marked as exhibits during trial though at the stage of adducing evidence in rebuttal, order passed by the Court in appeal allowing the documents to be read into evidence for decision of issues No.1 and 2 pertaining to merits of the controversy cannot be faulted with. Another submission made by counsel is that since the petitioners have been given an opportunity to adduce evidence to rebut the additional evidence i.e. documents Ex.P4 to Ex.P6, no prejudice shall be caused to the petitioners if the order impugned is allowed to sustain.

I have heard counsel for the parties, perused the paper-book, order dated 24.12.2012 passed by the trial Court (attested copy whereof made available during the course of hearing by counsel for the respondents) and the order impugned.

The plaintiffs have staked their claim to be co-owners/joint owners of the suit land being the daughters of Shama – defendant No.1 on the plea that the suit land is a co-parcenary property in the hands of Shama. They have also challenged relinquishment deed No.6927 dated 13.01.2006 executed by Shama in favour of his wife and two sons namely Anand and Akshay.

The main issue in the *lis* is whether the suit property is joint Hindu family co-parcenary property in which the respondents/plaintiffs being daughters of Shama has a right by birth. The plaintiffs filed an

application for additional evidence by invoking Section 151 CPC but as the application was filed at the stage of rebuttal evidence, the trial Court allowed the application to tender the documents only in rebuttal qua issues No.3 and 4. The very fact that the trial Court permitted the respondents/plaintiffs to tender the documents in evidence would prove that the documents were found to be relevant and material for decision of the suit. It is none of the plea of the petitioners that documents Ex.P4 to Ex.P6 are not relevant and material for the purpose of deciding the dispute raised by the plaintiffs nor they have challenged its credibility.

As per the settled position in law, additional evidence can be allowed at any stage of the proceedings if the same is otherwise necessary for just decision of the case. Equally true is that the Court in appeal can examine correctness or otherwise of each and every order passed by the trial Court while hearing the appeal on merits. Under the circumstances, the Appellate Court is well within its jurisdiction to examine order dated 24.12.2012. As such, arguments advanced by counsel for the petitioners that application filed by the appellants does not satisfy the requirements of clause (a) and (aa) of Rule 27 of Order 41 CPC do not assume any significance in the given circumstances. In view of the above, in my considered opinion, the Court in appeal in place of remitting the matter to the trial Court for adjudication afresh should have taken into consideration the documents Ex.P4 to Ex.P6 for deciding all the issues framed by the trial Court but by providing an opportunity to the petitioners to adduce evidence to rebut the documents Ex.P4 to Ex.P6.

In view of what has been discussed hereinabove, the petition is partly allowed. The impugned order is set aside and the matter is remitted to the Appellate Court for decision afresh on the basis of evidence

adduced by the parties including documents Ex.P4 to Ex.P6 for deciding all the issues framed by the trial Court. However, the Court in appeal shall provide an opportunity to the petitioners to lead evidence to rebut the additional evidence i.e. documents Ex.P4 to Ex.P6, in accordance with law. The order passed by the Appellate Court imposing costs of Rs.10,000/- upon the respondents/plaintiffs shall remain intact.

Disposed of accordingly.

The parties through counsel are directed to appear before the Court of appeal on 25.09.2017.

**SEPTEMBER 5, 2017**  
'D. Gulati'

**(REKHA MITTAL)**  
**JUDGE**

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|---------------------------|---|--------|
| Whether speaking/reasoned | : | yes/no |
| Whether reportable        | : | yes/no |