

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

CR-2349-2015 (O&M)

Date of decision: 10.11.2017

GURDEEP SINGH

...Petitioner

Versus

INDER SINGH AND ANR.

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Umesh K. Kanwar, Advocate for the petitioner.

Mr. Yogesh Aneja, Advocate for the respondent.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 16.01.2015 passed by the Additional District Judge, Fazilka whereby application for additional evidence to place on record certified copy of order dated 26.05.2014 and spot inspection report dated 23.05.2014 has been dismissed.

Counsel for the petitioner has submitted that the petitioner filed a suit for injunction restraining the respondents/defendants from interfering in his peaceful cultivating possession of gair marusi land measuring 6 kanals out of land measuring 8 kanals, detailed in the head note of the plaint. The parties adduced evidence in support of their contentions and eventually the suit culminated in judgment and decree dated 08.05.2014 passed by Civil Judge (Jr. Div.), Fazilka whereby suit filed by the petitioner was dismissed. The petitioner preferred first appeal

against the judgment and decree passed by the trial Court wherein application (Annexure P5) for permitting the petitioner/appellant to lead additional evidence was filed. After reply to the application was filed and having heard counsel for the parties, the appellate Court dismissed the application vide order impugned. It is argued with vehemence that as the documents sought to be produced by way of additional evidence came into existence subsequent to decision of the suit by the trial Court, the same could not be produced during trial despite exercise of due diligence, therefore, application filed by the petitioner clearly falls within the purview and ambit of Order 41 Rule 27 (aa).

Another submission made by counsel is that the first appellate Court dismissed the application without appreciating merits of the appeal, therefore, the impugned order cannot be allowed to sustain and liable to be set aside with a direction to the Court to decide the application afresh while hearing the appeal on merits. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court of India **State of Rajasthan Vs. T. Sahani 2001 (2) RCR (Civil) 419**. Further reference has been made to judgment of this Court **Municipal Committee, Ellenabad Vs. Shanti Devi, 2003(1) RCR (Civil) 85**.

Counsel representing the respondent, on the other hand, has supported the impugned order with the submissions that order of revenue authorities regarding correction of khasra girdawari during pendency of suit cannot be taken into consideration by the civil Court. For this purpose, he

has referred to judgment of this Court **Gian Chand Vs. Kultar Singh and another**, 1985(1) ALR 95. In addition, it is argued that the Court hearing the appeal along with the application under Order 41 Rule 27 CPC could have two options namely it can dismiss the application for additional evidence if it did not find any justification for reception of additional evidence and proceed to dispose of the appeal. If the appeal itself is not disposed of and the Court finds justification for reception of additional evidence, it can take the additional evidence itself and dispose of the appeal or if it is of the view that the additional evidence would require to be collected by taking evidence through a subordinate court, it will have an option to do so. For this purpose, he has referred to judgment of this Court **Manjinder Singh Vs. Jatinder Singh, 2016(2) Law Herald 1441**.

I have heard counsel for the parties, perused the paper book particularly the annexures appended with the petition.

Be that as it may, there cannot be any dispute about the preposition of law laid down by this Court in Manjinder Singh's case (supra). It is undisputed position of the case that the Court in appeal dismissed the application for additional evidence at a stage prior to deciding the appeal on merits. In the light of enunciation laid down by Hon'ble the Supreme Court in State of Rajasthan's case (supra) referred to in the judgment of this Court in Municipal Committee, Ellenabad's case (supra), the Court of appeal was required to decide the application for additional evidence at the time of deciding the appeal on merits because it

is only at that stage the Court can appreciate if the additional evidence is necessary in terms of Clause b of Rule 27 of Order 41 CPC. This apart, it remains a fact that the documents in question came into existence subsequent to decision of the suit, therefore, could not be produced before the trial Court despite exercise of due diligence envisaged under Order 41 Rule 27 (aa) CPC. The plea raised by counsel for the respondents with regard to evidentiary value of the documents can be appreciated by the Court of appeal in case the documents are allowed to be produced by way of additional evidence.

For the foregoing reasons, the petition is allowed. The impugned order is set aside with a direction to the appellate Court to decide the application for additional evidence afresh at the time of hearing the appeal on merits, in accordance with law.

However, nothing stated hereinbefore shall cause prejudice to either of the parties at the time of decision of application and appeal on merits.

No order as to costs.

10.11.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No