

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.7679 of 2013
Date of decision:09.05.2017**

Vikram and others

...Petitioners

Versus

Khem Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Aman Pal, Advocate for the petitioners.
Mr.Ashutosh Kaushik, Advocate for respondents No.1 to 7.
Mr.Manoj Kumar Sangwan, DAG, Haryana.
Mr.Bikram Chaudhary, Advocate for respondent No.10.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition, at the hands of defendants, filed under Article 227 of the Constitution of India, is directed against the order dated 27.11.2013 (Annexure P-6), whereby application of the petitioners moved under Order 41 Rule 27 of the Code of Civil Procedure ('CPC' for short), was dismissed by the learned first appellate court, during the pendency of the first appeal.

Notice of motion was issued and in the meantime, passing of final order was stayed by this Court.

Heard learned counsel for the parties.

It has gone undisputed before this Court that the only one document was being sought to be produced by the petitioners as additional evidence and the said document was assessment register of the respondent-municipal council. Thus, it has become crystal clear that the additional evidence, which was sought to be produced by the petitioners during the pendency of their first appeal, was coming from proper custody and out of

official record of the respondent-municipal council itself. There was no scope of its fabrication or manipulation. Further the entire case of both the parties revolves around this material piece of evidence, i.e. assessment register prepared by the Municipal Council. It is so said because perusal of the assessment register shall disclose and make it clear as to whether the land in dispute is still a public park at the site or residential houses have already been constructed thereon. Since the above-said material aspects of the matter were not properly considered and appreciated by the learned first appellate court, while passing the impugned order, it cannot be sustained.

It also goes without saying that once the above-said assessment register is permitted to be brought on record by way of additional evidence, allowing the application of the petitioners moved under Order 41 Rule 27 CPC, it will certainly facilitate the learned first appellate court to arrive at a judicious conclusion with a view to do complete and substantial justice between the parties. Further, bringing the above-said assessment register on record by way of additional evidence will not cause any prejudice to the respondents nor they are going to be taken by surprise, because the assessment register is part of an official record of the respondent-council itself. Under these peculiar facts and circumstances of the case noticed hereinabove, it can be safely concluded that the learned Addl. District Judge misdirected himself, while passing the impugned order and the same cannot be sustained, for this reason also.

It is the settled principle of law that rules of procedure are meant for advancing the cause of justice. Every court of law must make an endeavour to grant reasonable opportunities to both the parties to put up their best case before the court. Neither anybody should be condemned

unheard nor anybody should be forced to go home with the grievance that sufficient opportunity was not granted by the court. By following this principle of law, learned court would achieve twin objects i.e. (i) it would avoid multiplicity of litigation between the parties and (ii) the court would be in a better position to do complete and substantial justice between the parties.

So far as the case in hand is concerned, since the learned Additional District Judge failed to appreciate and follow the above-said basic principles of law, while passing the impugned order, it is unhesitatingly held that the impugned order is suffering from patent illegality because of which, the same cannot be sustained.

During the course of hearing, learned counsel for the respondents could not address any meaningful arguments and rightly so, it being a matter of record. Since the above-said assessment register is coming from the official record of the respondent-municipal council itself, there was hardly any scope for the learned counsel for the respondents to oppose such a prayer made on behalf of the petitioners.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found to be suffering from patent illegality and perversity, it cannot be sustained. Accordingly, the impugned order dated 27.11.2013 passed by the learned first appellate court is hereby set aside. Application moved by the petitioners under Order 41 Rule 27 CPC would stand allowed.

Consequently, the learned first appellate court is directed to allow the

petitioners to prove the above-said assessment register by way of additional evidence.

Resultantly, with the above-said observations made and directions issued, the instant civil revision petition stands allowed, however, with no order as to costs.

9.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No