

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

**CR No.8806 of 2015
Date of Decision:7.9.2017**

Seema and another

...Petitioners

Versus

Bhup Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.S.P.Chahar, Advocate for the petitioners.
Mr.S.K.Daaria, Advocate for respondents No.1 to 56

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 28.9.2015 passed by the learned first appellate court, whereby application of the petitioners was dismissed under Order 41 Rule 27 of the Code of Civil Procedure ('CPC' for short), they have approached this Court by way of instant civil revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

Learned counsel for the petitioners submits that the impugned order passed by the learned first appellate court is totally a non-speaking order. The petitioners, by way of an application under Order 41 Rule 27 CPC, wanted to produce the revenue record so as to prove their plea that the suit land was ancestral. He further submits that since the learned first

appellate court failed to appreciate the true factual as well as legal aspect of the matter, while passing the impugned order, a manifest injustice has been caused to the petitioners. He prays for setting aside the impugned order, by allowing the present revision petition.

Per contra, learned counsel for the respondents, while placing reliance on a judgment of the Hon'ble Supreme Court in **Andisamy Chettiar Vs. Subburaj Chettiar, 2016(2) PLR 406**, submits that the case of the petitioners was not falling in one of three exceptions provided under Rule 27 Order 41 CPC. The learned first appellant court was well justified in passing the impugned order and the same deserves to be upheld. He prays for dismissal of the revision petition.

Having heard the learned counsel for the parties at considerable length and after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the learned first appellate court miserably failed to appreciate the true fact situation obtaining on the record of the case before passing the impugned order, it cannot be sustained. It is so said because the petitioners have made out a case for allowing their application under Order 41 Rule 27 CPC. Their case was certainly falling in more than one exceptions provided under relevant provisions of law contained in Order 41 Rule 27 CPC.

Further, since the revenue record would be coming from proper custody and there would be no scope of any fabrication thereof, no prejudice was likely to be caused to the respondents. In this view of the matter, it can be safely concluded that the learned Additional District

Judge ought to have allowed the application Order 41 Rule 27 CPC moved by the petitioners and the impugned order 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. Nobody 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 substantial justice between the parties. However, since the learned first appellate court could not appreciate the above-said principle of law, while passing the impugned order, it has been found suffering from patent illegality and the same cannot be sustained, for this reason as well.

During the course of hearing, learned counsel for respondents could not raise any meaningful argument in support of the impugned order and rightly so, it being a matter of record, because no such argument was available to him. In fact, the impugned order has been found suffering from a patent illegality, as the same is running counter to the undisputed facts of the case because of which the impugned order is liable to be set aside.

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 suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 28.9.2015 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.

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

7.9.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No