

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

**(i) RSA No.310 of 2016 (O&M)
Date of Decision : 17th May, 2017**

Satbir Singh alias Sehdev (deceased) through his LR
..... Appellant

Versus

Raj Bala
..... Respondent

(ii) RSA No.313 of 2016 (O&M)

Satbir Singh alias Sehdev (deceased) through his LR
..... Appellant

Versus

Raj Bala and another
..... Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. O.P.Goyal, Senior Advocate
with Mr. Mukesh Verma, Advocate
for the appellants.

Mr. Rakesh Nehra, Advocate
for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

These two identical regular second appeals, at the hands of unsuccessful defendants, are directed against the impugned judgments and decrees, passed by the learned Courts below whereby two identical civil suits for declaration and permanent injunction were decreed by the learned trial Court vide its impugned judgment and decree dated 13.06.2012 and two identical first appeals of the defendants were also dismissed by the learned first appellate court vide its separate but identical impugned judgments and decrees dated 10.12.2015.

Detailed factual background of these cases is not necessary to be recorded here for the reasons that while deciding both the first appeals of the defendants, the learned first appellate court left the application moved under Order 41 Rule 27 of the Code of Civil Procedure (in short 'CPC'), undecided. It seems to be an inadvertent mistake.

It is the settled proposition of law that such an application moved by the appellant during the pendency of his first appeal before the learned first appellate court under Order 41 Rule 27 CPC for permission to lead additional evidence, is bound to be decided preferably at the time of deciding the appeal itself. However, such an application cannot be left to be undecided, as has been done in the instant case. Under these facts and circumstances of the case noticed hereinabove, the impugned judgments and decrees, passed by the learned first appellate court cannot be sustained.

Faced with the abovesaid peculiar fact situation, learned counsel for the respondents, despite making his best efforts strongly opposing the appeals vehemently arguing in support of the impugned judgments passed by the learned first appellate court, could not deny the fact that application of the appellants under Order 41 Rule 27 CPC was left undecided and rightly so, it being a matter of record. It was the bounden duty of the first appellate court to decide the application moved by the appellant under Order 41 Rule 27 CPC and the same could not have been left undecided as has been illegally done in both these appeals. However, this Court is not making any comments on merits of the case at this stage lest it should cause any prejudice to either of the parties. Learned first appellate court will do well while examining the relevance and evidenciary

value of the additional evidence sought to be produced.

In this view of the matter, this Court is left with no other option except to set aside the impugned judgments and decrees passed by the learned first appellate court and the same are hereby set aside.

Consequently, both these appeals are remanded to the learned first appellate court but only to the limited extent qua deciding the pending application for the additional evidence, moved by the appellant under Order 41 Rule 27 CPC alongwith the appeal, however, strictly in accordance with law. Since the matter remained pending before this Court for more than one year, the learned first appellate court is directed to decide both these appeals afresh alongwith pending application for additional evidence, at the earliest possible time but within a period of three months from the date of receipt of certified copy of this order. Parties are directed to appear before the learned First Appellate Court on 06.07.2017.

Resultantly, with the abovesaid observations made and directions issued, both these appeals stand allowed, however, with no order as to costs.

17th May, 2017
mamta

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No