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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1763-2017

Date of decision : 06.03.2018

Gurmail Singh

... Petitioner(s)

Versus

Harmail Singh

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Garg, Advocate
for the appellant.

Mr. S.K. Manchanda, Advocate for
Mr. Sahil Arora, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the order dated 30.11.2016, whereby an application moved under Order 41 Rule 27 of the Code of Civil Procedure by respondent-plaintiff in an appeal filed against the judgment and decree dated 21.04.2014, vide which, the suit was dismissed, has been allowed by the First Appellate Court.

Mr. Munish Garg, learned counsel for the petitioner-defendant submitted that the respondent-plaintiff instituted the suit for declaration challenging the mutation with regard to the estate of Gurcharan Singh, which was got entered into on the basis of a forged Will dated 26.06.2008, was dismissed by the trial Court vide judgment and decree dated 21.04.2014. However, an appeal bearing No.29 of 19.05.2014 was

preferred and during the pendency of the appeal, an application under Order 41 Rule 27 CPC was filed, which has been allowed by the Court below vide impugned order dated 30.11.2016, which is not legally permissible or sustainable in the eyes of law in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Malayalam Plantations Ltd. V/s State of Kerala and another” 2011 AIR SC 559.**

He further submitted that an application for additional evidence has to be allowed along with the appeal, but not independently, thus, urges this Court for setting aside of the impugned order, under challenge.

Learned counsel for the respondent-plaintiff submits that since there was no interim stay of the impugned order, the additional evidence has already been led and the appeal is at the final stage.

I have heard the learned counsel for the parties and appraised the paper book and am in agreement with the submissions of Mr. Garg, Advocate that the impugned order could not have been passed independent of the appeal as the application has to be decided along with the appeal in view of the *ratio decidendi* culled out in the judgment cited supra. This fact has not been disputed by the counsel for the respondent-plaintiff. Be that as it may, since the additional evidence in pursuance to the impugned order has already been led, the petitioner-defendant would have a right to raise the objection at the time of the decision of the appeal with regard to the evidence brought on record, for, must have cross-examined the witnesses by way of additional evidence. The lower Appellate Court shall take into consideration all the objections raised by the petitioner-defendant at the time of the decision of the appeal.

The present revision petition stands disposed of in the
aforementioned terms.

06.03.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No