

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

CR No.4329 of 2017(O&M)

Date of Decision: 05.09.2018

**Harpreet Kaur and another
Versus**

..... Petitioners

Sawinder Kaur and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. B.S. Jaswal, Advocate
for the petitioners.

Mr. Premjit Kalia, Advocate
for respondents No.2 to 4.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 25.05.2017 passed by Additional District Judge, Amritsar whereby application under Order 41 Rule 27 CPC filed by the plaintiffs/appellants therein for permission to lead additional evidence was allowed.

[2]. Perusal of the impugned order would show that the plaintiffs by way of additional evidence sought to produce *jamabandi* for the year 1887-88, *jamabandi* for the year 1890-91, *jamabandi* for the year 1921-22, Chhajra Nisab V 1936-37, *jamabandi* for the year 1936-37, khatauni istemal,

naksha haqdarwar, certified copy of mutation No.1575 in respect of inheritance of Gurbax Singh son of Deva Singh son of jawahar Singh, copy of *jamabandi* for the year 1960-61 along with translations of above mentioned documents, *jamabandi* for the year 2000-01, *jamabandi* for the year 2005-06 and *jamabandi* for the year 2010-11. The aforesaid documents were claimed to be necessary documents for just decision of the appeal.

[3]. In view of Order 41 Rule 28 CPC, wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other Subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

[4]. Lower Appellate Court accepted the application on the ground that additional evidence sought to be produced is in the form of old revenue record and could not be produced before the trial Court as the same were not traceable at the time of leading evidence by the plaintiffs. The documents were considered to be just and appropriate for proper adjudication of the case. The assertions made by the plaintiffs by way of affidavit could not be countered by the respondents by way of filing any counter affidavit. The application for additional

evidence was allowed and the Lower Appellate Court in terms of Order 41 Rule 28 CPC kept the case with itself and adjourned the same for leading evidence before it.

[5]. It appears from the record that the requirement of Order 41 Rule 28 CPC has been complied with. The application under Order 41 Rule 27 CPC ought to be heard along with hearing of the appeal only and the order thereon ought not to be pronounced prior to the order in the appeal. If the Appellate Court is of the view that additional evidence is to be permitted, the Appellate Court would either allow the evidence to be led before itself or remand the matter and in any case after the same, would re-hear the appeal. However, it is not a ground for dissecting the hearing. In case, where the application under Order 41 Rule 27 CPC has been adjudicated upon prior to the adjudication of the appeal, no challenge is to be made. The challenge thereto is to be made along with challenge to the decision of the appeal.

[6]. Since the appeal is yet to be decided, the additional evidence even if, allowed to be led, the evidentiary value of the same would be gone into by the Lower Appellate Court at the relevant stage. The ultimate effect of the additional evidence would be adjudged by the Lower Appellate Court after final hearing of the appeal on merits.

[7]. In view of above, I deem it appropriate to dispose of the revision petition with a liberty to the petitioners to challenge the factum of decision of the application under Order 41 Rule 27 CPC along with decision of the appeal on merits, if the decision ultimately goes against the defendants/petitioners.

[8]. Disposed of.

September 05, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No