

In the High Court of Punjab and Haryana at Chandigarh

202

CR No. 5520 of 2015

Date of decision: 23.5.2018

NIRMALA DEVI & ORS

.....petitioners

Versus

PARMOD KUMAR

.....respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Raghav Sharma, Advocate
for the petitioners.

Mr. Rajiv Sidhu, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(oral)

A suit for recovery of ₹ 2,07,217.42 was filed by the plaintiff-respondent on 17.2.2006. On 8.2.2012, an application for additional evidence was filed by the plaintiff before the trial Court in respect of documents which were in possession of the plaintiff since 2001. Earlier there was a partnership firm which was dissolved on 30.3.2001 and thereafter, a sole proprietorship firm of the plaintiff came to be formed. Forms 'A' and 'C' issued by the Registrar of the firms and *bahi* entries were sought to be produced as additional evidence by the plaintiff-respondent.

The said application was contested by the defendants-petitioners by filing reply on 10.2.2012. Trial Court dismissed the application on 13.2.2012. That order was never assailed by the plaintiff in an appropriate forum. After more than 5 months thereafter, the trial Court dismissed the suit on 31.7.2012. An appeal was filed before the lower Appellate Court on 3.9.2012. A perusal of the grounds of appeal would show that no challenge to the order dated 13.2.2012 was made by the plaintiff-respondent.

Para No.7 of the ground of appeal gives the following pleadings:-

“That the findings of the learned lower Court are erroneous to the extent of dissolution of firm and issuance of notice thereby. These grounds have been made by the learned lower judge only to support her findings in the judgment. It was not the case of any party where upon the erroneous findings are resting.”

After about 2 years and 5 months of filing the appeal, an application for additional evidence under Order 41 Rule 27 CPC was filed on 9.2.2015 before the lower Appellate Court and the same was contested by the defendants. That application has been allowed by the Lower Appellate Court vide order dated

27.7.2015. However, no reference was made to the proceedings undertaken before the trial Court for additional evidence that ultimately culminated by passing the order dated 13.2.2012.

Learned counsel for the petitioners vehemently contented that in the absence of any challenge made to the order dated 13.2.2012 passed by the trial Court, the application dated 9.2.2015 filed before the lower Appellate Court for the same relief was not maintainable. Even the factum of decision dated 13.2.2012 was not assailed by the plaintiff-respondent in appeal before the lower Appellate Court. A perusal of the impugned order would show that no such consideration was made by the lower Appellate Court, while passing the impugned order dated 27.7.2015.

After hearing learned counsel for the parties, I am of the view that the impugned order is illegal to the extent of non consideration of the aforesaid facts on record.

In view of above, I deem it appropriate to direct the lower Appellate Court to revisit the application dated 9.2.2015 under Order 41 Rule 27 CPC and to pass appropriate order after considering the effect of order dated 13.2.2012 passed by the trial Court in accordance with law. Both the parties are directed to appear before the lower Appellate Court on the date

fixed.

Petition stands disposed of accordingly.

May 23, 2018

**(RAJ MOHAN SINGH)
JUDGE**

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Whether reasoned/Speaking

Yes/No

Whether reportable

Yes/No