

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.732 of 2017

Date of decision:03.04.2018

Harbans Kaur @ Gurpreet Kaur

... Petitioner

Vs.

Rajwant Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S.Salar, Advocate
for the petitioner.

Mr. Ved Parkash, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 20.12.2016 (Annexure P-5), whereby, the Lower Appellate Court has allowed the application filed by the respondents under Order 41 Rule 27 CPC for leading additional evidence and the appeal is still pending.

Mr. S.S.Salar, learned counsel for the petitioner submitted that the procedure adopted by the Lower Appellate Court is unknown to the law in view of the law laid down by the Hon'ble Supreme Court **Malayalam Plantations Ltd. vs. State of Kerala and another 2011 AIR (SC) 559.** wherein, it has been held that application for additional evidence has to be decided alongwith appeal and not separately.

Per contra, Mr. Ved Parkash, learned counsel for respondent no.1 submitted that evidence led on behalf of the appellant was essential and necessary for adjudication of the appeal, for, it was in respect of the Power of Attorney dated 01.05.2007 of plaintiff Rajwant Singh in favour of Sukhdev Singh as the trial Court had dismissed the suit on the technical ground that the same was not maintainable in the absence of original Power of Attorney and prayed for dismissal of the revision petition by maintaining the order under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Salar. It is settled law that application for additional evidence has to be decided alongwith appeal. The aforementioned view of mine is derived from the finding rendered in paragraph 11 of the aforementioned judgment. This fact has not been controverted by learned counsel for respondent no.1.

The Lower Appellate Court, in my view, ought not to have decided the application separately as it should have been decided alongwith appeal, in case, such evidence is found to be essential and necessary for adjudication of the lis or falling within the parameters of Order 41 Rule 27 CPC.

Resultantly, the impugned order is set aside and the matter is remitted back to the Lower Appellate Court for deciding the application afresh under Order 41 Rule 27 CPC alongwith pending appeal.

Revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

April 03, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No