

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

RSA No.48 of 1991 (O&M)

Date of Decision: 14.05.2018

Ravinder Singh and others . . . Appellants

Versus

Inder Singh and others . . . Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.L. Malhotra, Advocate for the appellants.

Mr. Ajay Jain, Advocate for respondent Nos.1 and 2.

None for respondent Nos.4, 6 and 7.

Respondent No.5 died.

Amit Rawal, J. (Oral)

The present appeal has been filed by the plaintiff against the concurrent finding of fact whereby the suit for declaration to the effect that gift deed dated 20.04.1971 executed by Bhopal Singh, defendant No.3, in favour of Inder Singh and Madan Singh, defendants No.1 and 2, in respect of land measuring 186 kanals 18 marlas, 2/3rd share of which measures 124 kanals 12 marlas in respect of various khasra numbers situated within the revenue limits of Village Bayal, Tehsil Narnaul, had been dismissed by the trial Court and upheld by the lower Appellate Court.

Mr. J.L. Malhotra, Advocate appearing on behalf of the appellants submitted that during the pendency of the appeal, an application under Order 41 Rule 27 CPC for producing on record the

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certified copy of judgment and decree dated 16.06.1950 passed by Sub Judge Ist Class, Narnaul in Civil Suit No.64 dated 01.04.2006 as also judgment and decree dated 09.12.1950 passed by District Judge, Narnaul in Civil Appeal No.40 of 1950 as additional evidence was submitted and reply of the same was filed, but the lower Appellate Court without deciding the application, dismissed the appeal.

Mr. Ajay Jain, Advocate, appearing on behalf of respondents does not dispute the aforementioned fact.

I have heard the learned counsel for the parties, appraised the paper book.

The *zimni* orders shows the filing of application under Order 41 Rule 27 CPC and the factum of receipt of reply has also been noticed in the order dated 07.05.1999, which reads as under :-

*“Pr Sh. Udami Ram Advocate for the appellants.
Sh. Hari Mohan Adv. For respondents.
Reply of application 41 Rule 27 CPC filed. To come up
on 11.6.90 for arguments.*

Sd/-
ADJ,>NNL.
7.5.90”

I have heard learned counsel for the parties and gone through the *zimni* orders from the date when the appeal was instituted till the adjudication of the same, there is no reference, that lower Appellate Court decided the application separately.

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After going through the facts of the present case, I find that it is a fit case where the matter requires to be re-visited by the lower Appellate Court for proper adjudication as it has not been noticed in the impugned judgment that any specific order on the application under Order 41 Rule 27 CPC was passed.

In view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Malayalam Plantations Ltd. vs. State of Kerala and another 2011 AIR (SC) 559**, the impugned judgment and decree is not sustainable and the matter is liable to be remanded back. Accordingly, the impugned judgment and decree dated 14.09.1990 of lower Appellate Court is set aside and the matter is remanded back to it. In essence, the appeal is restored to its original number. The lower Appellate Court is directed to decide the appeal along with an application filed, under Order 41 Rule 27, CPC, in accordance with law.

Lower Appellate Court is also directed to ensure that respondent Nos.4 to 7 as per memo of parties in High Court are also impleaded in the lower Appellate Court and thereafter decide the appeal in accordance with law after effective service upon them.

Parties through their counsel are directed to appear before the lower Appellate Court on 06.07.2018.

[AMIT RAWAL]
JUDGE

May 14, 2018
sachin

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No