

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

Sr. No.216

RSA No.332 of 2013 (O&M)

Date of decision: 13.08.2018

Kashmiri Lal (since deceased) through his LRsAppellants

versus

Dharam PalRespondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Rakesh Chopra, Advocate
for the appellants.

* * *

DEEPAK SIBAL, J. (Oral)

The appellants had filed a suit seeking therein separate possession of ½ share by way of partition of about 10 marlas of land situated in the abadi area of village Chuhar, Tehsil Nakodar, District Jalandhar (for short – 'the suit property'). The Trial Court decreed the appellants' suit. The respondent filed an appeal to challenge the aforesaid judgment and decree passed by the Trial Court. During the pendency of such appeal, the appellants filed an application under Order 41 Rule 27 CPC to lead additional evidence. Reply to the application was filed by the respondent. However, without opining on the afore-referred application, the Appellate Court proceeded to dispose of the respondent's appeal.

In spite of service of notice issued in the present second appeal,
no one has put in appearance on behalf of the respondent.

After hearing learned counsel for the appellants, in view of the fact that the Appellate Court, after issuing notice and receiving a reply thereto, did not opine upon the application filed by the appellants to place on record additional evidence and went on to finally adjudicate upon the respondent's appeal, after setting aside the impugned judgment and decree, I remit the matter to the Appellate Court for deciding the respondent's appeal afresh after considering and disposing of the appellants' application filed by them under Order 41 Rule 27 CPC.

The afore view of mine finds support from the judgment of the Apex Court rendered in **2009(1) Civil Court Cases 211, Jatinder Singh and another versus Mehar Singh and others**, wherein it has been held as under:-

“4. While deciding the second appeal, however, the High Court had failed to take notice of the application under Order 41 Rule 27 CPC of the Code of Civil Procedure and decide whether additional evidence could be permitted to be admitted into evidence. In our view, when an application for acceptance of additional evidence under Order 41 Rule 27 of the the Code of Civil Procedure was filed by the appellants, it was the duty of the High Court to deal with the same on merits. That being the admitted position, we have no other alternative but to set aside the judgment of the High Court and remit the appeal back it to for a decision afresh in the second appeal along with the application for acceptance of additional evidence in accordance with law.

5. For the reasons aforesaid, the impugned judgment is set aside. The appeal is thus allowed to the extent indicated above. There will be no order as to costs.

6. We make it clear that we have not gone into the merits as to whether the application for acceptance of

additional evidence under Order 41 Rule 27 of the Code of Civil Procedure should be allowed or not, which shall be decided by the High Court at the time of decision of the second appeal in accordance with law. We also make it clear that we have not gone into merits of the second appeal which shall also be decided by the High Court along with the application under Order 41 Rule 27 of the Code of Civil Procedure. Considering the facts and circumstances of the case, we request the High Court to dispose of the second appeal at an early date preferably within six months from the date of supply of a copy of this order to it.”

The present appeal is allowed in the above terms with a further direction to the Appellate Court to consider and decide the respondent's appeal afresh within four months from the date of receipt of a certified copy of this order.

(DEEPAK SIBAL)
JUDGE

August 13, 2018
Jyoti 1

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