

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

RSA.No.2232 of 2016 (O&M)

Joginder Singh and Another

...Appellants

Versus

Gurmej Kaur and Ors.

....Respondents

Date of Order: 07.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amarjit Markan, Advocate for appellants.

Mr. Harish Bansal, Advocate for respondent Nos.1 to 3.

AMIT RAWAL, J (ORAL)

Plaintiffs-appellants have assailed concurrent findings of both the courts below whereby their suit has been dismissed and the appeal met with the same fate.

This Court, on 12.1.2018, after noticing the contentions of learned counsel for the appellants that the appeal preferred by the plaintiffs-appellants has been decided without adjudication of the application moved under Order 41 Rule 27 CPC, issued notice of motion.

Plaintiffs-appellants instituted the suit claiming possession as owner by way of specific performance of the agreement of sale deed dated 11.11.1998 in respect of land measuring 11 kanals 18 marlas out of 95 kanals 5 marlas as detailed in the head note of the plaint and also sought the alternative relief for recovery of Rs.1,00,000/- i.e Rs.50,000/- as earnest money & Rs.50,000/- as damages and for permanent injunction restraining

the defendants from making alienation of the suit land or creating third party interest therein except the plaintiffs.

Said suit was dismissed vide judgment and decree dated 18.1.2014. Plaintiffs-appellants preferred the appeal along with an application under Order 41 Rule 27 CPC. Appeal was entrusted to the Addl. District Judge, Hoshiarpur and the notice of the appeal along with the application was issued to the respondents on 01.3.2014.

Learned counsel for the appellants submitted that in the application for additional evidence, plaintiffs-appellants sought permission to lead secondary evidence in order to prove copy of entry of the deed writer regarding agreement of sale in question which was on two pages of the register whereas photo copy of the said relevant entry of both pages was taken on one page inadvertently by joining two pages, which resulted into incorrect and improper photocopies. Thus the leave of the lower Appellate Court was sought for leading additional evidence for proper adjudication.

On the other hand, learned counsel for the respondents fully supported the impugned judgments and decrees of the courts below. He submitted that there was no occasion for the appellants to move such application. Said application was bereft of any reasoning and was an attempt to delay the execution of the lis.

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. Even on perusal of the impugned judgment and decree, there is no reference to the application, rather the lower Appellate Court, in support of its finding, categorically averred that

no such documents have been placed on record, before it, whereas, according to the learned counsel for the appellants, the documents sought to be placed on record, by way of additional evidence, were/are essential and necessary for adjudication of the appeal.

In view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Malayam Plantations Ltd Vs. State of Kerala & Anr 2011 AIR SC 559**, It is well settled law that in case, an application for leading additional evidence is filed along with the appeal filed under Section 96 CPC and the same remain undecided, the matter is required to be remitted back to the lower Appellate Court. Accordingly, the impugned judgment and decrees of the 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 as expeditiously as possible. The appeals are allowed, in the aforementioned terms.

The parties through their counsel are directed to appear before the lower Appellate Court on 28.5.2018.

May 07, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No