

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

247

RSA-23-2015 (O&M)
Date of decision: 16.11.2018

KAMLA AND ORS

... Appellants

Versus

DHANNO

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Kulvir Narwal, Advocate for the appellants.
Mr. Sandeep S. Ghangas, Advocate for the respondent.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against judgment and decree dated 27.08.2014 passed by the Additional District Judge, Jhajjar whereby the appeal preferred by the respondent/plaintiff against the judgment and decree dated 05.11.2012 passed by the trial Court dismissing suit for declaration and permanent injunction has been accepted, judgment and decree impugned were set aside and the respondent/plaintiff has been declared as owner, mutation No.2032 dated 20.03.2007 Ex.P2 and mutation entry No.2133 dated 14.03.2008 Ex.P3 were ordered to be set aside. However, it was made clear that nothing expressed in the judgment will affect merits of civil suit No.380/2012 titled Smt. Kavita Devi etc. Vs. Smt. Kamla Devi etc. pending in the Court.

The first submission made by counsel for the appellants/defendants is that the Appellate Court allowed the respondent/plaintiff to place on record additional documents marked as Exs.A1 to A4 without providing an opportunity of hearing to the appellants in respect of application for additional evidence nor they were allowed an opportunity to rebut the additional evidence, therefore, the judgment and decree passed by the Appellate Court cannot be allowed to sustain and liable to be set aside on this score alone.

Counsel representing the respondent/plaintiff has not disputed

the aforesaid contention but would state that even if the documents Exs.A1 to A4 are taken out of consideration, there is sufficient evidence on record to substantiate plea of the respondent/plaintiff with regard to her entitlement to be declared as owner of the property in question.

Be that as it may, it is undisputed position of the case that the Appellate Court allowed the respondent/plaintiff to produce additional documents marked as Exs.A1 to A4 by way of additional evidence but while allowing additional evidence, the Court neither provided an opportunity to the appellants/defendants to contest plea of the respondent/plaintiff for adducing additional evidence nor allowed them to lead evidence in rebuttal qua the additional evidence. Once the Appellate Court has allowed additional evidence without an opportunity of hearing to the appellants and those documents were taken into consideration for deciding the appeal on merits, contention raised by counsel for the respondent/plaintiff to decide the appeal on merits by ignoring the documents Exs.A1 to A4 cannot be accepted. In the given circumstances, there is no option with the Court except to set aside judgment and decree dated 27.08.2014 passed by the Appellate Court and the matter needs remittance to the Appellate Court for decision of the appeal afresh by deciding the application for additional evidence, in accordance with law.

For the foregoing reasons, without examining merits of the case, the appeal is allowed, the judgment and decree of the Appellate Court are set aside and the matter is remitted to the Appellate Court for decision of the appeal afresh by disposing of the application for additional evidence, in accordance with law. Parties through their counsel are directed to appear before the Appellate Court on 14.12.2018.

16.11.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No