

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

103

RSA-47-2016 (O&M)
Date of Decision : 29.10.2018

Udham Singh alias Gurwinder Singh

....Appellant

vs.

Iqbal Singh and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Navjeet Singh, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

CM-107-C-2016

For the reasons recorded, the application is allowed. Delay of 80 days in refiling the appeal is condoned.

Main Case

This appeal has been filed against the concurrent judgments of the Courts below dismissing a suit filed by the appellant against his father claiming that property held by his father was ancestral and he had a share therein.

Issue No.1 was to the following effect :-

“1. Whether the property in dispute is an ancestral joint Hindu family property of which the plaintiff is a co-parcener? OPP.”

The onus of this issue was obviously on the appellant. He however while leading evidence on this issue did not prove the revenue record etc. but tried to prove it during rebuttal evidence. Both the Courts

below declined to consider that evidence and dismissed the suit and that is how the appellant is before this Court.

Learned counsel has pointed out that issue No.5 was to the following effect:-

“5. Whether the plaintiff has got no locus standi to file this suit? OPD”

It is his contention that he could have led the revenue record as evidence in rebuttal on issue No.5 the onus of which was on the respondents. In my opinion, the argument is flawed. In the sense in which the learned counsel is arguing, issue No.5 would be covered by issue No.1 and once it was the primary case of the appellant that the property was ancestral he had to prove it by leading positive evidence but he could not bring substantive evidence to that effect in rebuttal and claim that he was bringing it in response to the issue of locus standi.

In the circumstances, no fault can be found with the judgments of the Courts below. The appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

29.10.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No