

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

Date of decision: 8.3.2018

1.

RSA No. 3670 of 2015(O&M)

Umed Singh and another

....Appellants

VERSUS

Suman Dahiya and another

.....Respondents

2.

RSA No. 3671 of 2015(O&M)

Umed Singh and another

....Appellants

VERSUS

Meena Kumari and another

.....Respondents

3.

RSA No. 4373 of 2015(O&M)

Umed Singh and another

....Appellants

VERSUS

Rajinder Singh Nandal and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate for the appellants.

REKHA MITTAL, J.

CM No.9023-C of 2015

Prayer in this application is for condoning delay of 37 days in
re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Umed Singh-appellant, the application is allowed. Delay of 37 days in re-filing the appeal stands condoned.

Disposed of accordingly.

CM No.3652-C of 2018 in
RSA No.3670 of 2015

Heard.

Allowed as prayed for.

Annexures A-3 to A-5 are taken on record subject to just exceptions.

Disposed of accordingly.

RSA Nos.3670, 3671 and 4373 of 2015

This order will dispose of RSA Nos.3670, 3671 and 4373 of 2015 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No.3670 of 2015.

Umed Singh and another, claiming themselves to be tenants of land subject matter of sale deed dated 10.10.2005 executed by Smt. Krishna (defendant No.2) in favour of Smt. Suman Dahiya (defendant No.1) prayed for pre-empting the sale and sought injunction restraining the defendants from interfering into their peaceful possession.

Respondent/defendant No.1 resisted claim by raising preliminary objections inter alia maintainability, cause of action, locus standi, concealment of material facts and estoppel etc. Landlord- tenant relationship between the appellants and vendor of the answering defendant was categorically disputed. She further denied the appellants to be in possession of the suit land with the plea that for the past about 3 years preceding the sale deed, suit land was leased out to the brick kiln owner for

excavation of earth. Entries in the khasra girdawari register were wrongly and illegally got changed by the appellants in collusion with the Tehsildar concerned without any spot inspection being carried out. It is further averred that order passed by the Tehsildar was set aside by the Commissioner and order passed by the Commissioner was upheld by the Financial Commissioner. Civil Writ Petition filed by the appellants against the orders passed by the revenue authorities was dismissed by the Punjab and Haryana High Court. All other material averments in the plaint were denied with a prayer for dismissal of the suit with costs.

On the basis of pleadings of the parties, trial Court framed issues reproduced in para 4 of the judgment of the trial Court. Parties were permitted to adduce evidence in support of their respective contentions. After having heard counsel for the parties on the basis of materials on record, trial Court negatived plea of the appellants that they have preferential right to pre-empt the sale by Smt. Krishna in favour of Smt. Suman Dahiya on the basis of alleged tenancy rights and eventually the suit was ordered to be dismissed with costs and the appellants were given liberty to withdraw *zair-e-panjam*, if any deposited by them. The appeal preferred by the appellants did not find favour with the Additional District Judge, Sonapat vide judgment and decree dated 22.12.2014 whereby findings recorded by the trial Court came to be affirmed.

Counsel for the appellants would urge that during pendency of the suit before the trial Court, the appellants filed an application for amendment of the plaint in order to plead family settlement dated 11.04.1989 but the application for amendment was dismissed by the trial Court. The appellants preferred revision against the order passed by the trial Court and the same was disposed of vide order dated 19.05.2011 with

the observations that the petitioner had raised a plea of tenancy and agreement sought to be pleaded is in the nature of evidence to be led in support of plea of tenancy. It is further argued that the appellants filed an application for additional evidence (Annexure A-3) and the same was allowed by the trial Court vide order dated 10.10.2011 reproduced in para 10 of the grounds of appeal. On the same very day, statement of counsel for the appellants was recorded and family settlement dated 11.04.1989 was tendered into evidence and marked as Ex.P10. According to counsel, arguments in the case were heard on 10.10.2011 itself and the case was adjourned to 12.10.2011 for orders. It is further argued that in the first appeal preferred by the appellants, they filed application for permission to adduce additional evidence under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') (Annexure A-5) to enable the appellants to examine the witnesses detailed in para 3 of the application qua family settlement. It is argued with vehemence that the Court in appeal seriously erred by dismissing the application for additional evidence which was disposed of simultaneously with disposal of the appeal vide judgment dated 22.12.2014. It is further argued that the appellants have filed application under Order 41 Rule 27 read with Section 151 CPC (CM No.9024-C of 2015) permitting the appellants to adduce additional evidence to produce documents (Annexures A-1 and A-2) namely original of Ex.P10 and order dated 11.10.2012 passed in LPA No.1602 of 2012 by the Punjab and Haryana High Court. According to counsel, order passed by the Court in appeal dismissing the application for additional evidence may be set aside and application for additional evidence may be allowed in the interest of substantial justice and the first appeal is required to be decided afresh after allowing the appellants to adduce additional evidence

and an opportunity to the contesting party to lead evidence in rebuttal, if any.

I have heard counsel for the appellants, perused the paper-book particularly judgments passed by the Courts.

Counsel for the appellants has made submissions only with regard to entitlement of the appellants to adduce additional evidence in terms of the application filed in the first appeal and decision of the appeal afresh on the basis of additional evidence. However, he has not advanced any argument on the basis of materials already on record to contend that consistent findings recorded by the Courts below suffer from an error much less perversity or the appeal gives rise to a substantial question of law that requires adjudication after hearing the contesting party. That being so, it can be safely held that in absence of additional evidence sought to be produced before the first Appellate Court, appeal filed by the appellants is devoid of merit much less raising a substantial question of law.

The question that now invites consideration is whether the order passed by the first Appellate Court rejecting application for additional evidence is liable to be affirmed or otherwise.

Before advertng to the submissions made by counsel to assail order of Appellate Court dismissing application for additional evidence, it is pertinent to note that the Legislature in its wisdom deleted Order 18 Rule 17-A CPC dealing with adducing of additional evidence at the trial stage with a clear intent to avoid delay in decision of cases. This Court is not oblivious of the fact that despite Order 18 Rule 17- A CPC has been abrogated, right of a party to adduce additional evidence is not completely scuttled. The Court, in exercise of inherent power under Section 151 CPC,

can allow additional evidence in deserving cases. The power under Section 151 CPC is quite wide. As per the settled position in law, "wider the power, more is the caution", in order to avoid its misuse. The inherent power is to be used sparingly and not in a routine manner. This apart, the suit remained pending before the trial Court for more than 7 years as it was instituted in January 2006 and decided in February 2013. If plea of the appellants for adducing additional evidence in view of application filed before the first Appellate Court is allowed, it would frustrate the cause of expeditious disposal. This apart, Courts help those who are vigilant and diligent. A litigant who slumbers over his right is not entitled to any relief in exercise of discretionary jurisdiction of the Court.

Nevertheless, the application dated 29.09.2011 (Annexure A-3) filed before the trial Court for adducing additional evidence to produce the family settlement dated 11.04.1989 allegedly effected between the previous owner with father of the appellants/plaintiffs regarding tenancy was allowed vide order dated 10.10.2011, reproduced in para 10 of the grounds of appeal. In para 2 of the application, it is averred that family settlement dated 11.04.1989 is quite necessary to be produced and proved by calling the witnesses in whose presence said family settlement took place. Counsel for the appellants made a statement dated 10.10.2011 (Annexure A-4), tendered into evidence family settlement dated 11.04.1989 marked as Ex.P10 with objection by counsel opposite. Though, the order dated 10.10.2011 makes reference that rebuttal evidence was closed, arguments heard and case was adjourned to 12.10.2011 for orders but perusal of the judgment and decree passed by the trial Court makes it evident that the suit was finally decided by the trial Court on 27.02.2013, meaning thereby that after recording statement by counsel for

the appellants on 10.10.2011 tendering document Ex.P10 the suit remained pending before the trial Court for more than one year. There is nothing on record suggestive of the fact that the appellants made an attempt to examine the witnesses for proving the document Ex.P10, in accordance with law or to remove objection raised by the opposite party. Counsel for the appellants has failed to advance any argument much less convincing as to how application for additional evidence before the first Appellate Court with the same prayer as was made before the trial Court and actually allowed, in the given circumstances, could be maintained and sustained.

Order 41 Rule 27 CPC provides for production of additional evidence in Appellate Court. A relevant extract from Rule 27 reads as follows:-

“27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.”

In the instant case, application filed by the appellants for additional evidence before the Court in appeal by no stretch of imagination falls within the purview and ambit of clauses (a) and (aa) of Order 41 Rule 27(1) CPC. Clause (b) gives discretion to the Appellate Court to allow additional evidence if the Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause. The discretion exercised by the Court in appeal rejecting plea of the appellants to adduce additional evidence cannot be faulted with.

So far as application for additional evidence filed before this Court, even if the original of Ex.P10 is taken on record, it would not advance cause of the appellants as the document is not per se admissible in evidence rather requires to be proved in accordance with law. Similarly, the order dated 11.10.2012 passed in LPA No.1602 of 2012 would be of no avail/consequence for the appellants to seek setting aside of the concurrent findings recorded by the Courts.

For the foregoing reasons, the appeals fail and are accordingly dismissed in limine. No order as to costs.

MARCH 8, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no