

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

102

RSA-4148-2015 (O&M)
Date of Decision : 27.9.2018

Smt. Om Devi @ Om Lata

....Appellant

vs.

Sh. Ram Chander and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Sanjay Sharama, Advocate
for the appellant(s).

AJAY TEWARI, J. (Oral)

CM-10062-C-2015

For the reasons recorded, the application is allowed. Delay of 10 days in refiling the appeal is condoned

Main Case

This appeal has been filed against the concurrent judgment of the Courts below dismissing a suit filed by the appellant.

The appellant had filed a suit claiming the relinquishment deed made by her father in favour of his brothers as illegal because the property was ancestral in his hands. In the written statement, apart from the other pleas the respondents also took the plea that the property was not ancestral. Yet the appellant led no direct positive evidence to prove the ancestral nature of the property. On account of that and for other reasons, the suit was

dismissed.

Before the lower Appellate Court the appellant filed an application for additional evidence but that application was rejected on the ground of lack of due diligence and also on the ground that in the application the appellant had made an averment which was not correct and the lower Appellate Court held that she was trying to overreach the Court also. The lower Appellate Court dismissed the appeal as well and that is how the appellant is before this Court.

Even before me, an application for additional evidence has been filed wherein now the appellant wants to place on record evidence which in her opinion would tend to show that the property was ancestral in nature.

Learned counsel has relied upon the judgment of the Supreme Court passed in the matter of ***Jaipur Development Authority vs. Kailshwati Devi*** reported as ***AIR 1997 SC 3243***. I am afraid that this judgment is completely inapplicable to the facts of the present case. There what was challenged was an order of the High Court declining an application for 'additional evidence' in appeal on the ground that the party had not led any evidence in the Trial Court and only a party who led some evidence in the Trial Court would lead 'additional evidence'. In that context, the Supreme Court held that this is not a mandatory condition and even a party who did not lead any evidence before the Trial Court could be permitted to lead evidence. However, their Lordships held as follows :-

“.....The sub-rule mentions the conditions which must be complied with by the party producing the additional evidence, namely, 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” in the trial Court.”

The only justification given by the counsel for not leading the evidence is that no issue was struck.

In my opinion, this is also not a valid argument. There is a catena of judgments which lay down that if parties are aware of the issues which are before the Court and the case that they have to meet, the fact that specific issue is not framed would not render the finding illegal on that ground.

Learned counsel has argued that one of the witnesses of respondents had admitted in the cross-examination that property was ancestral. There is also a huge body of law on the nature and kind of evidence which is required for this purpose. It is necessary to prove that the property is ancestral and merely an admission by a witness would not be sufficient to hold any property to be ancestral.

Resultantly, the appeal stands dismissed.

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

27.9.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No