

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

104

RSA-598-2016 (O&M)

Date of Decision : 21.09.2018

Smt. Anjana Devi

..... Appellant

Versus

Dalip Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Sudhir Rana, Advocate
for Mr. Keshav Pratap Singh, Advocate
for the appellant.

AJAY TEWARI, J. (ORAL)

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

The appellant had filed a suit for possession of certain property on the allegation that the respondent Nos.1 to 4 had encroached thereupon. The respondents No.1 to 4 apart from denying the claim of the appellant had also filed a counter claim asserting that the property in dispute was owned by them and prayed for an injunction restraining the appellant from interfering in their possession over the land in dispute. Both the courts below held that for succeeding the appellant should have got the property demarcated but she did not do so and dismissed the suit. An application for additional evidence was also filed before the lower appellate court praying for an opportunity to get the property demarcated which was also declined by the lower appellate court being not falling within the parameters of Order 41 Rule 27 CPC because there was no explanation why that evidence could not be led during the trial.

Before me, counsel for the appellant has argued that to do complete justice between the parties the court should permit the additional evidence. He has also relied upon the judgment of this Court in the matter of ***Punjab Wakf Board, Ambala Cantt. vs. Shri Neeko, 2004(3) R.C.R. (Civil) 506***. In that case the issue was regarding the property of the Wakf Board and this Court held as follows:-

“A bare look at the provisions of Order 26 Rule 9 of the Code, reproduced above, would demonstrate that powers of the Court to order appointment of Local Commissioner is not dependent upon an application to be made by a party. If, therefore, the Court may be of the view that in a suit appointment of a local investigation is requisite or proper, it can surely exercise its powers in, suo motu, appointing a Local Commissioner. This view is supported by a Single Bench judgment of Hon'ble Allahabad High Court in Gajraj and others vs. Ramadhar and others, AIR 1975 Allahabad 406. In the present case, there was available an application by a party seeking appointment of a Local Commissioner, even though by way of additional evidence under the provisions of Order 41 Rule 27 of Civil Procedure Code, but the same, as mentioned above, has been dismissed on the ground that it was filed at a belated stage. The mere delay in filing the application can never be fatal. The Court has to impart justice to the parties and if the Court may require some evidence, such evidence can be even ordered to be brought by the Court under the provisions of Order 41 Rule 27 and in any case such a course should be adopted when a party makes an application for the said purposes. For delay, of course, as mentioned above, the other party can be duly compensated by way of costs. This Court is of the firm view that learned Appellate Court should have allowed the application filed under Order 41 Rule 27 of the Civil Procedure Code so as to do complete justice between the parties.”

In the first place that was a case involving a public body. Courts always keep in mind the fact that suits filed by public

bodies are often prosecuted by inefficient, negligent or even worse, corrupt officials. In any case, the public bodies can never bestow the same kind of personal care and diligence which an individual litigant is required to exercise. In the present case, I am not convinced that conditions exist where I should exercise my inherent powers under Order 26 Rule 9 CPC. There is no explanation why the appellant did not lead this evidence. Once it was the specific case of the appellant that respondents No.1 to 4 (who are otherwise neighbours) had encroached upon her property and she had legal advice right from the filing of the suit, there is no justification to not have brought on the record necessary evidence.

Appeal is dismissed. No costs.

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

September 21, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No