

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

**RSA No.5508 of 2014 (O&M)
Date of Decision:04.12.2018**

Kanwar Singh Gill

...Appellant(s)

Versus

Sudha Chaudhary and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.R.K.Gupta, Advocate for the appellant.
Mr.Harkesh Manuja, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

The plaintiff-appellant is in the regular second appeal against the judgments passed by the courts below.

The plaintiff-appellant has also challenged the order passed by the learned first appellate court, dismissing the application under Order 41 Rule 27 of the Code of Civil Procedure through which the plaintiff prayed for permission to lead additional evidence so as to produce on record copies of jamabandis and certified copies of the sale-deeds.

The learned first appellate court had dismissed the application by observing that the plaintiff has failed to explain as to why documents, which are now sought to be produced, could not be produced earlier. It has also been observed that plaintiff-appellant failed to exercise due diligence in order to collect and produce these documents as the plaintiff had filed a suit on the basis of a registered sale-deed executed by M/s Rajdhani Traders dated 27.1.2006.

It is the case of the plaintiff that the defendants have started raising construction which compelled the plaintiff to file this suit.

On the other hand, the defendants pleaded that M/s Rajdhani Traders was never owner and it is their predecessor-in-interest Sukhbir Singh was owner of land measuring 17 marlas having purchased the same in the year 1982.

Since this Court is intending to remit the case back to the learned first appellate court, therefore, any detailed findings may prejudice the case of any of the party. Thus, it would be more appropriate to record short reasoned order. The documents, which are now sought to be produced, are of unimpeachable credence as jamabandis are part of record are prepared by the revenue authorities in discharge of their duties and such record of right carries a presumption of truth. Further, the sale-deeds which are now sought to be produced are also registered sale-deeds. Still further, there is a dispute between the parties with regard to correctness of the demarcation.

Learned counsel for respondent No.1 has pointed out that the demarcation carried out was not proper as demarcation was started from pucca point of the adjoining revenue estate.

In view of the controversy involved between the parties, this Court is of the view that the documents, which are sought to be produced, would help the court in adjudicating the dispute. Hence, application for additional evidence is allowed. The learned first appellate court, to whom the appeal is being remitted, would grant opportunity to both the parties to

lead the evidence in support and in response to the additional evidence produced. Both the parties would also be entitled to move an application, requesting the court to get both the properties demarcated from an experienced revenue official to help the court to decide the dispute in an effective manner.

Parties through their counsels are directed to appear before the court on 10.1.2019.

The regular second appeal is disposed of, accordingly. Pending application(s), if any, shall also stand disposed of, in terms thereof.

04.12.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No