

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.6188 of 2017 (O&M)

Date of decision: 23.02.2018

Vikram Singh and others

..... Appellants

Versus

Chandra Devi through LRs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Puneet Jindal, Sr. Advocate with
Mr. Varun Goyal, Advocate
for the appellants.

Mr. Y.P. Khullar, Advocate
for the caveator-respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below. Dispute is whether there was a previous judgment and decree passed in favour of predecessor of the defendant in Civil Suit No.28 of 1991 decided on 26.05.1992. It is the allegation of the defendant that the file of the case decided has been got misplaced by the plaintiff. In order to establish the existence of the decree passed by the Court, the appellants moved an application under Order 41 Rule 27, CPC before the learned First Appellate Court to produce in additional evidence the following documents:-

“3. That the appellant/applicant seek permission to produce certified copy of the record of case/suit bearing No.537, date of institution 23.08.1999, decided on 28.09.2006, case titled as “Prabhu etc. Vs. Balbir etc.”, certified copy of plaint, copy of

judgment and copy of decree sheet, copy of affidavit of evidence of Charan Singh, copy of affidavit of evidence of Nathi, and certified copy of jamabandi for the year 1996-97 of village Kairaka and copy of mutation No.440 sanctioned on 17.01.1993.

4. That the appellant/applicant seeks permission to produce the case file of case No.28, date of institution 03.09.1991 and date of decision 26.05.1992 titled as 'Yad Ram Vs. Prabhu etc.' which was filed by Sh. Balbir Singh Tewatia, Advocate, District Court, Palwal who was engaged by the appellant/applicant's father before the court of AC 1st class, Palwal for declaring ownership of the suit land with case diary of counsel Sh. Balbir Singh Tewatia, Advocate for the year 1991 and 1992 with record of plaint copy of titled as Yad Ram Vs. Prabhu etc., copy of mutation No.377, sanctioned on 10.06.1983, copy of list of owner Patti Shamlat Kallu of village Kairaka, Hadbast No.25, copy of khasra girdawari for the year 1987 to 1995, copy of jamabandi for the year 1986-87, copy of jamabandi for the year 1981-82, copy of jamabandi for the year 1976-77, copy of jamabandi for the year 1961-62, copy of jamabandi for the year 1957-58 in Urdu and jamabandi for the year of 1954-55 in Urdu and copy of summon which documents were exhibited as Ex.PW-1 to Ex.PW-11 in case No.28, decided in 1992."

Learned First Appellate Court dismissed the application in a totally cursory manner. The operative part of the order reads as under:-

"After having heard both the sides, I find no merit in the instant application. The documents now sought to be produced by way of additional evidence were very much in the knowledge of the appellants/defendants at the time of leading evidence before learned Trial Court. The appellants/defendants themselves had closed their evidence. No reason whatsoever has been given as to why the said documents were not produced on file when the case was listed for their evidence. The evidence

already produced on record is sufficient for decision of this appeal. Thus, I find no ground to allow the application. As such, the application in hand stands dismissed.”

Defendants-appellants have challenged the aforesaid order while filing the present appeal.

After hearing learned counsel for the parties at some length, this Court is of the considered opinion that the learned First Appellate Court has failed to appreciate the documents sought to be produced on file. The Court has just dismissed the application on the ground that these documents were in the knowledge of the defendants-appellants and the defendants-appellants had closed their evidence.

The application under Order 41 Rule 27 is required to be examined by the Court with reference to the dispute involved in the case. Order 41 Rule 27 provides for three different eventualities when the application for additional evidence can be allowed. The documents sought to be produced by way of additional evidence were mostly either part of public record of unimpeachable credence or part of the Court file in different suits. Out of those, one document is an affidavit of predecessor of the plaintiff-Charan Singh who has admitted that a Court decree was passed. The aforesaid affidavit was submitted in the Court in a different litigation.

Taking into consideration these facts, this Court is of the considered opinion that the learned First Appellate Court should have been more careful in deciding the application for additional evidence. Learned First Appellate Court is a last Court for appreciation of evidence available on the file. Learned First Appellate Court is required to adjudicate upon the dispute after re-analyzing the evidence. Provisions for leading additional evidence under Order 41 Rule 27 of the Code of Civil Procedure has been

made enabling the parties to produce evidence subject to fulfillment of requirement laid under Order 41 Rule 27, CPC. In the considered opinion of this Court, the documents sought to be produced by the appellants would be required by the Court to adjudicate upon the dispute.

In these circumstances, the order dismissing the application for additional evidence dated 13.09.2017 is set aside. Learned First Appellate Court is requested to grant opportunity to both the parties to lead evidence in support thereof and thereafter, re-decide the appeal. Learned First Appellate Court is requested to complete the aforesaid exercise within a period of one year from the date of receipt of certified copy of this order.

Parties through their counsel are directed to appear before the learned First Appellate Court on 21.03.2018.

Appeal is disposed of.

23.02.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No