

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

**(1) SAO No. 19 of 2017 (O&M)
Date of Decision: December 03, 2018**

Bhupinder Singh
.....APPELLANT.

VERSUS

Lakhbir Singh and others
.....RESPONDENTS.

(2) SAO No. 27 of 2017 (O&M)

Bhupinder Singh
.....APPELLANT.

VERSUS

Lakhwinder Kaur and others
.....RESPONDENTS.

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Nitin Thatai, Advocate
 for the appellant in both the appeals.

Mr. J.S.Dhaliwal, Advocate and
Mr. S.K.Bawa, Advocate
for respondent No. 1/applicant in SAO No. 19 of 2017 and
for respondent No. 2 in SAO No. 27 of 2017.

Mr. Vaibhav Narang, Advocate
for respondent No. 4 in SAO No. 19 of 2017 and
for respondent No. 1 in SAO No. 27 of 2017.

SURINDER GUPTA, J.(Oral)

Heard.

Plaintiff-Lakhbir Singh filed suit seeking declaration of his title
and possession over the portion of property bearing House No. 374 R,

Gurcharan Singh. The suit was contested by defendants No. 3 and 4. Though, the Will dated 05.05.1986 was in disputed by defendants but the original Will was produced by defendant No.3-Lakhwinder Kaur, when she appeared as witness.

Learned trial Court took a note of the fact that no specific issue regarding the execution of Will dated 05.05.1986 was framed but keeping in view the evidence led by the parties, it proceeded to decide this issue and recorded findings that execution of the Will is not proved. The Will dated 24.08.2000 propounded by defendant No. 3 Lakhwinder Kaur was also discarded on the ground that Will dated 05.05.1986 was not proved and it was held to be not valid even qua share of Lajwant Kaur, which she would have inherited by way of inheritance from Gurcharan Singh.

Learned Ist Appellate Court framed two additional issues as follows:

- 1. Whether Gurcharan Singh has executed a valid registered Will dated 5.5.86? OPP*
- 2. Whether the Will dated 5.5.86 is forged and fabricated document? OPD4*

The Ist Appellate Court set aside the judgment and decree passed by the trial Court with direction to the parties to appear before the trial Court to lead further evidence on the additional issues . The trial Court was directed to decide the case afresh.

Learned counsel for the appellant has argued that when the trial Court has discussed and recorded finding on the issue of execution of Will dated 05.05.1986, option was available with the Ist Appellate Court, even after framing of these issues to look into the findings recorded by the trial

trial Court with direction to give opportunity to the parties to lead further evidence on these issues. This order of Ist Appellate Court has resulted in giving opportunities to the plaintiff/respondent to fill up lacunae.

Learned counsel for respondent No. 1 has not disputed this fact that the trial Court has recorded the findings regarding proof of Will dated 05.05.1986. He has argued that there was no issue regarding the validity and illegality of this Will and original Will which was in possession of defendant No. 3 was also not produced despite moving an application by plaintiff/respondent No. 1. This original Will was produced only when Lakhwinder Kaur appeared as witness. He further draws my attention to the application under Order 41 Rule 27 moved by respondent No.1 before Ist Appellate Court which was not decided rather it was held to be infructuous after framing of additional issue.

It is evident from judgment of the trial Court that issue of Will dated 05.05.1986 (Ex. P-1) and evidence led by respondent No. 1 was discussed in detail, while recording findings that this Will is not duly proved as per law. In view of detailed findings of the trial Court, the option before the Ist Appellate Court was either to decide legality and validity of the Will dated 05.05.1986 alleged to have been executed by Gurcharan Singh without framing any issue to this effect or by framing an additional issue. Even after framing of additional issues, the appellate Court could proceed further to appreciate the evidence led by the parties to prove the execution of the Will, instead of remanding the matter to the trial Court by setting aside the judgment and decree passed by it.

Respondent No.1 had moved an application under Order 41

Rule 27 CPC before the Ist Appellate Court which requires to be decided,

before deciding the appeal on merits. That application was held to be infructuous, as the case had been remanded to the trial Court.

As a sequel of above my discussions, I am of the considered opinion that the order passed by the Ist Appellate Court is not sustainable to the extent that judgment and decree passed by the trial Court was set aside and case was remanded with direction to grant two opportunities to each party to lead evidence and to decide the case afresh. The same is set aside. However, the order of the Appellate Court framing additional issues is upheld and the Appellate Court is directed to decide both the additional issues at its own level.

Respondent No.1 had moved an application under Order 41 Rule 27 CPC which the Ist Appellate Court will decide before deciding the appeals on merits. With above directions, these appeals stand disposed of.

Parties are directed to appear before the Ist Appellate Court on 20.12.2018 on which date both the appeals will be taken up and proceeded further in accordance with law.

(SURINDER GUPTA)
JUDGE

December 03, 2018.
Jyoti-II

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***