

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2969 of 2003 (O&M)

Date of Decision: 26.03.2019

Surinder Singh and another

..... Appellants

Versus

Amrik Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. H.K. Aurora, Advocate
for the appellants.

Mr. Munish Gupta, Advocate
for respondents No.1 and 2.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the regular second appeal against the judgment passed by the First Appellate Court.

Dispute in the present case is with regard to the estate of Lehmbhar Singh who died childless bachelor on 28.01.1994. Plaintiff No.2 claim exclusive succession on the basis of a Will dated 02.08.1993 whereas defendants denied this fact. Plaintiff No.2 is son of brother of Lehmbhar Singh. Learned trial Court decreed the suit after recording a finding that execution of the Will has been proved. However, First Appellate Court has reversed that finding by giving various reasons including the fact that the Will has been signed by the executor whereas he used to put his thumb impressions on other documents.

During the pendency of the appeal, an application under Order

41 Rule 27, CPC has been filed for permission to lead additional evidence

so as to produce on file various documents wherein late Sh. Lehmbhar Singh had put his signatures. Reply of the application has been filed objecting to application for additional evidence.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

In the considered view of this Court, in the present case, the application for additional evidence is required to be allowed as it would help the Court in adjudicating the dispute in effective manner. The Courts have been constituted to do substantive justice between the parties. Order 41 Rule 27(1)(b) enables the Appellate Court to permit in additional evidence any documents or any witness to be examined which would help the Court in doing substantive justice.

Keeping in view the aforesaid fact, the application (CM-3132-C-2019) for additional evidence is allowed. The documents are permitted to be led in additional evidence. However, since the documents which are sought to be produced in additional evidence would be required to be proved and a counter opportunity is also to be granted to the defendants, therefore, it would be more appropriate if the case is remitted back to the learned First Appellate Court to permit the parties to lead evidence in support of additional evidence as well as counter evidence, if any, to be led by the defendants. Thereafter, the First Appellate Court is requested to re-decide the appeal.

Accordingly, the case is remitted back to the First Appellate Court to re-decide the appeal.

Needless to observe that First Appellate Court would

independently decide the appeal without being influenced by the judgment which has been passed by his predecessor and set aside by this Court or observations made by this Court.

With these observations, the appeal is disposed of.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Parties through their counsel are directed to appear before the First Appellate Court on 12.04.2019.

26.03.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No