

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 501 of 2017

Date of Decision: 22.02.2019

Umed Singh and others

.....Petitioners

Vs.

Dharam Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vivek Khatri, Advocate,
for the petitioners.

None for the respondent.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioners challenge the order of the learned appellate Court (Additional District Judge, Hisar), dated 11.01.2017, by which the petitioners' application under Order 41 Rule 27 CPC, has been dismissed.

By the said application, the petitioners (appellants before that Court and the defendants in the suit filed by the respondent herein), sought to lead by way of additional evidence, the order dated 14.11.2009 (copy Annexure P-2), which reads as follows:-

“Learned counsel for the JD has tendered photostat copy of CWP No. 5144 of 1985. Statement recorded. Learned counsel for the DH has made a statement that present execution petition be adjourned sine die till decision of CWP No. 5144 of 1985. Statement recorded. Heard. In view of the statement of learned counsel for the DH, present execution petition is adjourned sine die and be put up again after decision of CWP No. 5144 of 1985. File be consigned.”

Learned counsel for the petitioners submits that the aforesaid order was passed in execution proceedings in a suit earlier filed by the respondent seeking a decree of permanent injunction qua the same land as is subject matter of the present *lis*, the suit in the present *lis* being one seeking possession of the suit land, with the respondent herein contending at that stage that he was owner in possession of the suit land.

He therefore submits that the execution proceedings in that *lis* having been put on hold by the respondent herein himself, whether any mileage is eventually to be given to the present petitioners in the current *lis* or not would naturally be upto the discretion of the learned trial Court upon appraising of evidence led by both sides, but simply dismissing the application on the ground that the two suits have nothing in common with each other due to the nature of the relief sought in each, was erroneous.

Notice having been issued in this petition more than two years ago on 24.01.2017, Mr. Vikas Bishnoi, Advocate, had put in appearance for the respondeat on 16.07.2018 and had also filed his power of attorney (as recorded in the order of that date). On that date, learned counsel for the petitioners was however not present.

Thereafter, counsel for the petitioners was present on 28.11.2018, with counsel for the respondents not being present, with the same repeated today.

Obviously, the respondent is no longer interested in defending the petition.

Keeping in view what Mr. Khatri, learned counsel for the petitioners has submitted, in my opinion, the learned appellate Court erred in not allowing the application which simply seeks to place on record an order passed at the instance of the respondent/decreed-holder in the previous *lis*, with the suit land being the

same in both the suits as already noticed.

Whether or not the petitioners would eventually be able to gain anything by placing on record the order passed by the execution Court in the previous *lis*, or not, would naturally be looked at by the appellate Court wholly on merits.

However, this petition is allowed with the impugned order set aside, and the application filed under Order 41 Rule 27 CPC by the petitioners before the appellate court, seeking to lead the aforesaid order .of the execution Court by way of additional evidence, is allowed.

February 22, 2019
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes