

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

RSA No.4250 of 2004 (O&M)

Date of decision : 28.02.2019

Ram Kishan and others

...Appellants

Versus

Raj Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Kshitij Bharati, Advocate for the appellants.

Mr. Ramesh Hooda, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs are in the Regular Second Appeal against the judgments passed by the Courts below.

Plaintiffs had filed a suit for declaration under Order 1 Rule 8 CPC in representative capacity claiming that they are owners of the property and entry in the revenue record is wrong and illegal. Alongwith the plaint, they produced on file copies of jamabandies for the year 1990-91, 1975-76, 1961-62, 1957-58, 1945-46, copy of khasra girdawri from Kharif 1991 to Rabi 1992, copy of '*fahrist istemal malkan*' and copy of '*fahrist istemal haqdaran*'.

Both the Courts have held that no document has been produced in evidence.

While admitting the appeal, on 17.09.2009, following order was passed framing question of law:-

“After hearing the learned counsel for the parties, I am of the opinion that the following substantial question of law would arise for consideration by this Court:

“Whether the appellants can be permitted to produce in evidence certified copies of the revenue record produced by the appellants alongwith suit, but not exhibited allegedly for the mistake of the counsel?”

Admitted.

Interim order to continue.

If the question framed is answered in favour of the appellants, it may necessitate the remand of the case. Therefore, it is considered expedient to order that the appeal be posted for final hearing within a period of six months.”

Learned counsel for the respondents also does not dispute that the aforesaid documents are part of the record, having been filed alongwith the plaint. However, these were not exhibited by the counsel or by the Court.

The documents which are produced alongwith plaint are documents produced in evidence. Most of the documents are copies of the revenue record of rights which are per se admissible. The Court was only to put an endorsement on the aforesaid document. Amendment in the Order 13 Rule 4 of the Code of Civil Procedure through which a proviso was added applicable in the States of Punjab, Haryana and U.T. Chandigarh enables the Court to endorse a document and admits such document in evidence which

was not endorsed in the manner laid down in the Rule. This proviso was added w.e.f. 11.06.1974 which is extracted as under:-

“Order XIII Rule 4:-

Endorsements on documents admitted in evidence— (1)

Subject to the provisions of the next following sub- rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely :—

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and

(d) a statement of its having been so admitted,

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

PUNJAB AND HARYANA – Add the following proviso to Rule 4, Order XIII:

Provided that where the court is satisfied that the document, not endorsed in the manner laid down in the above rule, was in fact, admitted in evidence, it shall treat the document as having been properly admitted in evidence unless non-compliance with this rule has resulted in miscarriage of justice.” 11.6.1974””

Hence, learned Courts below have erred in overlooking the documents which are per se admissible. Accordingly, question of law framed at the time of admission of the appeal is answered in favour of the

appellants.

Case is remitted back to the learned trial Court to grant opportunity to both the parties to lead any further evidence, if they wish to produce. Exhibit documents which are per se admissible. Thereafter, the learned trial Court would re-decide the suit after taking into consideration the evidence which has been produced. Parties through their counsel are directed to appear before the trial Court on 20.03.2019.

Keeping in view the fact that the suit was instituted in the year 1992, learned trial Court is requested to decide the suit as expeditiously as possible but not later than one year.

In view of the above, the present Regular Second Appeal is disposed of.

All the pending miscellaneous applications, if any, are disposed of in view of the abovesaid judgment.

28.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No