

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

RSA-1263-2011 (O&M)
Date of decision: 31.01.2019

Dilbag Singh and others

...Appellants

Versus

Om Parkash and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. S.K. Sharma, Advocate
for the appellants.

Mr. B.R. Gupta, Advocate
for respondent No.1 and LR's of respondent No.10.

H.S. MADAAN, J. (Oral)

Plaintiff Dilbag Singh and others had filed a suit for possession by way of partition with consequential relief of permanent injunction against defendant Mukhtyar Singh (deceased) through his LR's and others. That civil suit bearing No.RBT-275 of 2003 was finally decided by Civil Judge (Sr. Divn.), Jhajjar, vide judgment dated 14.01.2009 in terms of which the suit was dismissed. That judgment and decree was challenged in appeal by plaintiff Dilbag Singh and others. That civil appeal No.06 of 2009 was finally disposed of by District Judge, Jhajjar, vide judgment dated 06.10.2010 in terms of which appeal was also dismissed.

Still feeling aggrieved, the plaintiffs have approached this Court by way of filing Regular Second Appeal. The appeal was re-filed belatedly. An application under Section 5 of the Limitation Act for

condonation of delay was moved besides two more civil miscellaneous applications, notice of which was ordered to be given to the respondents. Only Mr. B.R. Gupta, Advocate has appeared on behalf of respondent No.1 and LRs of respondent No.10 to offer contest, though, presence of counsel has been wrongly marked for respondent Nos.1 to 13.

I have heard learned counsel for the appellants and learned counsel appearing on behalf of respondent No.1 and LRs of respondent No.10.

It has been contended by learned counsel for the appellants that during the pendency of appeal before learned District Judge, Jhajjar, an application under Order 41 Rule 27 CPC was filed for additional evidence to produce certified copy of sale deed having document No.157, Bahi No.1, Jild No.185 Page No.298-299), registered on 25.02.1946 as well as certified copy of plaint, written statement and issues of civil suit titled Raghbir Singh Vs. Dilbagh Singh and others. However, that application was erroneously dismissed by learned District Judge, Jhajjar. These documents are crucial for just decision of the case and unless these documents are there before the Court, the matter cannot be decided in a judicious and proper manner.

Learned counsel appearing for respondent No.1 and LRs of respondent No.10 states that he has no objection if the application in question is allowed and the case is remanded to learned District Judge, Jhajjar for fresh decision. Similar is the request by learned counsel for the appellants.

After hearing learned counsel and going through the record, I

find that the request has merit. Accordingly, the same is accepted. The impugned judgment and decree passed by learned District Judge, Jhajjar is set aside and the case is remanded to him with a direction to allow the application under Order 41 Rule 27 CPC filed by the appellant/plaintiffs and others. The appellate Court may grant opportunity to the respondents to lead evidence in rebuttal and then after hearing the arguments decide the case afresh. The parties through counsel are directed to appear before learned District Judge, Jhajjar on 08.03.2019. Learned District Judge shall issue notice to the remaining respondents so as to afford them an opportunity of hearing during the appeal.

Lower Court record be sent back immediately to learned District Judge, Jhajjar along with copy of this judgment.

31.01.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No