

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

RSA No.2124 of 2011 (O&M)

Date of decision: 24.01.2019

Iqbal Singh

..... Appellant

Versus

Shingara Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. K.B. Raheja, Advocate
for the appellant.

None for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit claiming that he is owner in possession of the land measuring 8 marlas on account of registered sale deed executed by Lakhbir Singh dated 21.03.2003. The defendants did not choose to contest the suit. However, since sale deed was not produced, the trial Court dismissed the suit.

First appeal was filed. An application for additional evidence was filed for permission to produce the sale deed. However, First Appellate Court did not decide the application for permission to lead additional evidence but choose to dismiss the first appeal. At the time of motion hearing, learned Judge passed the following order dated 25.04.2014 which reads as under:-

*“Learned counsel for the appellant inter alia contends that along with the first appeal he filed an application under Order 41 Rule 27 C.P.C. for leading additional evidence. He refers to various zimini orders passed by learned First Appellate Court, including the orders dated 23.09.2010 and 7.10.2010. However, learned First Appellate Court left the application for additional evidence undecided while dismissing his first appeal. He also places reliance on the judgment of the Hon'ble Supreme Court in **Balbir Singh & Anr. Vs. Jatinder Singh & Anr. 2009 (1) R.C.R. (Civil) 253.***

Notice of motion for 6.10.2014.”

Learned counsel has produced daily orders passed from 23.09.2010 to 04.11.2011 which are extracted as under:-

“Sh. A.K. Raheja, Advocate has filed power of attorney on behalf of the appellant. He also filed an application under order 41 rule 27 CPC. Copy thereof supplied for filing to the application. To come up on 07.10.2010.

23.09.2010

*Jaspal Singh
D.J. Fzr.*

Reply to the application under order 41 rule 27 CPC filed. Copy thereof supplied. To come up on 18.11.2010 for arguments on the application.

07.10.2010

*Jaspal Singh
D.J. Fzr.*

Adjournment requested which is granted. To come up on 16.12.2010 for arguments on the application under order 41 rule 27 CPC as well as on the main appeal.

18.11.2010

*Jaspal Singh
D.J. Fzr.*

Adjournment requested which is granted. To come up on 17.12.2010 for argument.

16.12.2010

*Jaspal Singh
D.J. Fzr.*

Adjournment requested which is granted. To come up on 22.12.2010 for argument.

17.12.2010

D.J. Fzr.

Arguments heard. Vide my separate judgment of even date this appeal has been dismissed with cost which are assessed to Rs.2200. Decree sheet be prepared. Lower Court record be sent back. File be consigned to the record room.

04.11.2011

*Jaspal Singh
D.J. Fzr.”*

On examination of the aforesaid orders, it is apparent that learned First Appellate Court failed to decide the application for additional evidence. No one has appeared for the respondent to dispute this factual position.

Accordingly, the judgment passed by the First Appellate Court is set aside. The case is remitted back to the First Appellate Court to re-decide the appeal after decision of the application for additional evidence. However, if the application for additional evidence has already been decided, the appeal would be deemed to have been dismissed.

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 20.02.2019.

24.01.2019
Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No