

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

RSA-1284-2012 (O&M)

Date of Decision: 18.09.2019

Amrit Pal Singh

...Appellant

Versus

Gurcharan Singh and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rakesh Gupta, Advocate,
for the appellant.

Mr. Sanjeev Manrai, Sr. Advocate, with
Mr. Gaurav Talwar, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. This appeal is directed against the judgment and decree dated 03.02.2011 passed by Addl. Civil Judge (Sr. Divn.), Mansa and the judgment and decree dated 18.10.2011 passed by Addl. District Judge, Mansa dismissing the appeal and upholding the judgment and decree passed by Addl. Civil Judge (Sr. Divn.). Mansa.

2. Briefly stated facts of the case are that Plaintiffs, namely Gurcharan Singh and Jarnail Singh respondents herein, filed a suit for permanent injunction, which was decreed restraining the defendant-appellant herein from dispossessing the plaintiffs from the suit property owned and in his possession as well as restrained them from demolishing the construction of the

boundary wall of the same in order to raise afresh construction illegally and forcibly except in due course of law. Aggrieved, the defendant-appellant preferred an appeal against the judgment and decree dated 03.02.2011 along with an application for permission to lead additional evidence, wherein it was averred that the demarcation of the property in dispute was conducted by the Revenue Authorities in presence of Mander Singh son of Bachan Singh resident of village Swaitch Kamalu, District Bathinda, Harpal Singh son of Mithu Singh resident of village Karamgarh, District Bathinda and Paramjit Singh, MC Ward No.7, Mansa, who are independent witnesses and the demarcation report dated 24.07.2008 and the same bears their signatures and the aforesaid persons are material witnesses. It was further alleged that the aforesaid witnesses could not be produced and examined before the lower Court at the time of evidence of the appellant due to some inadvertance, however, they were necessary and essential to be produced and examined for just and proper decision of the case. It was also alleged that the appellant wanted to produce and prove sale deeds No. 4645 dated 25.11.2005 and 4828 dated 05.12.2005 as the same could not be produced before the lower Court.

3. At the very outset, learned counsel for the appellant submits that while deciding the appeal, the first Appellate Court failed to take notice of the application under Order 41 Rule 27 of the Code of Civil Procedure and decided the appeal despite the fact that notice had been issued. In support of his argument he has placed reliance upon a judgment rendered by Supreme Court in ***Jatinder Singh & Anr. Minor through Mother vs. Mehar Singh & Ors. 2009(1) Civil Court Cases 211*** to contend that the application should have been decided.

4. This fact has not been controverted by learned Senior Counsel appearing on behalf of the respondents, however, submits that no ground is made out to allow the said application as the judgment and decree passed by the Courts below do not suffer from any illegality or perversity.

5. I have heard learned counsel for the parties and have gone through the records of the case.

6. Without going into the merits of this case, this appeal is decided on a very short question. Admittedly, the appellant filed an application under Order 41 Rule 27 CPC for adducing additional evidence, namely, three witnesses to the demarcation report dated 24.07.2008 as well as to produce two sale deeds in documentary evidence. However, while deciding the first appeal, the first Appellate Court had failed to take notice of the application under Order 41 Rule 27 CPC and decided the appeal. The judgment rendered by Supreme Court in ***Jatinder Singh & Anr. Minor through Mother*** case (supra) is fully applicable to the facts of the present case, wherein it had been held that when an application for acceptance of additional evidence under Order 41 Rule 27 CPC has been filed by the appellants, it was the duty of the Court to deal with the same on merits. The evidence sought to be produced goes to the root of the issue whether injunction ought to be allowed or not.

7. In view of the pronouncement of the Supreme Court, the impugned judgment and decree passed by the Appellate Court cannot be sustained and accordingly this appeal is accepted and the impugned judgment and decree is set aside and remitted the appeal back to it to decide afresh along with the application under Order 41 Rule 27 CPC for acceptance of additional evidence in accordance with law.

8. However, it is made clear that this court has not gone into the merits as to whether the application for acceptance of additional evidence under Order 41 Rule 27 CPC should be allowed or not, which shall be decided by the first Appellate Court while deciding the first appeal in accordance with law. The first appeal shall stand restored on the record of the first Appellate Court and shall be decided after affording an opportunity to both parties.

9. Parties to the suit are directed to appear on 27.11.2019 before the first Appellate Court who shall in turn make an endeavour to decide the case preferably within a period of six months.

10. Appeal stands allowed.

18.09.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.