

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.260 of 2013(O&M)

Date of Decision:25.03.2019

Chanderpati and others

...Appellant(s)

Versus

Bala @ Raj Bala and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Arun Jain, Senior Advocate with
Mr.Amit Jain, Advocate for the appellants.
Mr.Amit Chaudhary, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

The defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Detailed facts are not being noticed as this Court has decided to remit the matter back to the learned first appellate court. Dispute involved in the present case is whether plaintiff Bala @ Raj Bala is proved to be daughter of Late Shri Rishal Singh, who died on 29.12.1963. Before the learned trial court a certificate issued by the District Registrar-cum-Civil Surgeon, Mewat was produced on record, proving that Bala daughter of Rishal Singh had died, which was marked as Mark `A'.

The defendants-appellants filed an application under Order 41 Rule 27 of the Code of Civil Procedure for permission to prove that document.

Learned first appellate court dismissed the application on the ground that the document which the defendants-appellants wish to produce in the evidence is against their pleadings.

Learned senior counsel for the appellants has referred to the written statement filed by the defendants-appellants and specifically drawn attention of the Court to para 8 of the written statement in which the defendants-appellants have denied the assertions made by the plaintiff in the plaint.

No doubt, there are certain other sets of defendants, who have admitted the claim of the plaintiff. However, the defendants-appellants did not admit the claim of the plaintiff. Para 8 of the written statement of defendants No.2, 3, 5 and 12 to 14 is extracted as under:-

“That para No.8 of the plaint is wrong and denied. It is denied that the uncle of the plaintiff was ever got admitted the plaintiff in the school by showing the plaintiff as his own daughter instead of daughter of his brother Rishal Singh with wrong date of birth as alleged. The plaintiff be put to strict proof about her contention. The story as given in this para of the plaint is totally false and frivolous one.”

Keeping in view the aforesaid facts, it is apparent that the learned first appellate court committed an error in dismissing the application for additional evidence. In any case, whether copy of the certificate issued by the Registrar of Death and Birth is a public document, is debatable as to whether such document is *per se* admissible or not. The document would help the court in adjudicating the dispute properly. The provision for additional evidence before the learned first appellate court has been enacted or provided to do substantive justice between the parties.

In view of the above, the application for additional evidence is allowed.

Still further, learned senior counsel appearing for the appellants has pointed out that in any case the property left behind by Roop Chand,

who died in 1992, would not come to Raj Bala @ Bala-plaintiff as she is not a preferential heir. Learned first appellate court has not examined this issue.

Accordingly, the regular second appeal is allowed. The judgment passed by the learned first appellate court is set aside. The learned first appellate court is directed to permit the defendants-appellants to lead additional evidence. Opportunity would also be given to the plaintiff to lead counter evidence. Thereafter, the learned first appellate court would re-decide the appeal in accordance with law. Needless to observe that the learned first appellate court would decide the appeal without being influenced by the judgment passed by its predecessor which has been set aside or prima facie observations made by this Court. The learned first appellate court is requested to decide the appeal as expeditiously as possible.

The parties through their counsels are directed to appear before the first appellate court on 22.04.2019.

25.03.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No