

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 94 of 2016 (O&M)

Date of Decision: 02.05.2019

Rattan Singh

...Appellant

VERSUS

Parkash Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vipin Mahajan, Advocate
for the appellant.

Mr. G.S. Sirphikhi, Advocate
for the respondent.

SURINDER GUPTA, J. (Oral)

Heard.

Plaintiff-respondent through his guardian filed suit seeking declaration that sale deed dated 20.11.2006 is illegal, null and void as he was of unsound mind. The suit was dismissed by the trial Court. In appeal, an application was filed to summon record of Mental Hospital, Amritsar pertaining to examination of plaintiff-Parkash Singh on the basis of which he was declared lunatic and of unsound mind, which was allowed.

Learned counsel for the appellant while referring to provisions of Order XLI Rule 28 CPC has argued that allowing of additional evidence is no reason to set aside well reasoned judgment of trial Court. The option before Ist Appellate Court was either to record additional evidence of its own or to send the case to trial Court for recording of evidence and then to proceed further to dispose of the appeal on receipt of its report.

Learned counsel for the respondent has argued that lunacy of plaintiff is very basis of the case and in case it is proved that he was lunatic

and of unsound mind at the time of execution of sale deed dated 20.11.2006, the trial Court will have to reverse its findings on the relevant issues.

Order XLI Rule 27 CPC deals with production of additional evidence in Appellate Court. After allowing of additional evidence, Order XLI Rule 28 CPC prescribes mode of taking additional evidence, as follows:-

“Order XLI : Appeals from original decrees:

28. Mode of taking additional evidence - Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.”

I agree with submissions of learned counsel for the appellant that allowing of additional evidence is no reason to set aside judgment of the trial Court. Further course of action after allowing additional evidence before Ist Appellate Court was either to record evidence of its own or to send the file to trial Court or any other subordinate Court to record such evidence and send the same to the Appellate Court for disposal of appeal on merit.

In view of specific proposition of law as contained in Order XLI Rule 28 CPC, order passed by Ist Appellate Court remanding the case to trial Court for its decision afresh is not sustainable in the eyes of law and is modified to the extent that on allowing of application for permission to lead additional evidence, Ist Appellate Court shall proceed further in accordance with law as contained in Order XLI Rule 28 CPC.

The appeal is allowed in above terms.

Parties through their counsel are directed to appear before Ist Appellate Court on 29.05.2019, on which date, file of Civil Appeal No. 14 of 2015 shall be taken on board and proceeded further as per above observations.

May 02, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***