

RSA-3926-2014 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3926-2014 (O&M)

Date of Decision: 07th February, 2019

Balwinder Singh & another

...Appellants

Versus

Parveen Kaur & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rajinder Sharma, Advocate,
for the appellants.

Mr. Anil Chawla, Advocate
for respondent No.1.

Ms. Kiran Verma, Advocate
for respondent No.5.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-9056-C-2014

Application is allowed, subject to all just exceptions.

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This appeal has been preferred against the judgment and decree dated 07.06.2012 passed by the Civil Judge (Junior Division), Amritsar, whereby, suit preferred by Parveen Kaur – respondent No.1 was decreed, appeal against which, preferred by the appellants - defendants was dismissed by the Additional District Judge, Amritsar, vide judgment and decree dated 20.01.2014.

2. It is the contention of the learned counsel for the appellants that an application under Order 41 Rule 27 of CPC for leading additional evidence was preferred by the appellants on 07.02.2013, reply to which has been filed by respondent No.1 – plaintiff on 09.04.2013 but no decision on the said application has been taken by the Court either prior or along with the final decision in the appeal. He, thus, contends that the appellants - defendants have been prejudiced because of non-decision upon the application for additional evidence, which has been preferred by them. In support of his contention, he has placed reliance upon the judgment of Hon'ble Supreme Court in **Jatinder Singh & another minor through mother Vs. Mehar Singh & others** 2009 (17) SCC 465, wherein, it has been held that the matter has to be remitted back to the Court for fresh decision along with the application for additional evidence in accordance with law.

3. The factum with regard to the filing of the application for additional evidence and reply thereto by respondent No.1 – plaintiff is not in dispute nor is it disputed that the said application has not been decided by the lower Appellate Court. On perusal of the records, the contention as put forth by the counsel for the appellants – defendants is found to be correct.

4. In view of the above, the present appeal is allowed and the judgment and decree dated 20.01.2014 passed by the Additional District Judge, Amritsar, is hereby set aside. The case is remitted back to the lower Appellate Court for fresh decision along with the application filed by the appellant – defendants for additional evidence in accordance with law.

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Parties are directed to appear before the District Judge, Amritsar, on 28.03.2019.

4. Records of the case be sent back to the lower Appellate Court forthwith.

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In the light of the disposal of the main appeal, the present application for stay has been rendered infructuous.

Disposed of as such.

07th February, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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