

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No.69 of 2014(O&M)
Date of Decision: 12.07.2019

Joginder Singh

... Appellant

Versus

Shangara Singh & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. MS Sachdev, Advocate,
for the appellant.

Mr. Parambir Singh (Sunny), Advocate,
for respondents No.1, 3, 4 to 7, 10 to 12 and 14.

RAMENDRA JAIN, J.(Oral)

Fresh Vakalatnama filed on behalf of respondents No.1, 3, 4 to 7, 10 to 12 and 14 is taken on record. Respondents No.2, 8, 9 and 13 were earlier represented by Mr. SS Deol, Advocate. But now there is no representation on their behalf. Hence, they are proceeded ex parte.

Respondents No.45 to 49 have already been proceeded ex parte vide order dated 12.12.2014.

Learned counsel for the appellant contends that only contesting respondents are respondents No.1 to 14, whereas the remaining are proforma respondents. Therefore, their service may be dispensed with.

Ordered accordingly.

Briefly, the respondents-plaintiff filed a suit for possession of 1/4th share in land measuring 406 kanals 3 marlas detailed in the head note of the plaint against the defendants including the appellant with the

alternative relief for permanent injunction to restrain them from alienating the same in any manner whatsoever.

The trial Court after holding full-fledged trial, dismissed the suit vide judgment and decree dated 07.11.2012.

Being aggrieved, respondents No.1 to 14 approached the First Appellate Court, who while allowing their application under Order 41 Rule 27 CPC remanded the case to the trial Court for fresh decision after taking evidence from both the sides and allowing the respondents-plaintiff to prove certain documents vide impugned judgment dated 06.09.2014.

Being aggrieved, respondent No.1 has come before this Court by way of this regular second appeal.

Learned counsel for the appellant-defendant No.1 relying upon the decision of the Supreme Court in Syeda Rahimunnisa Vs. Malan Bi (Dead) by LRs & Anr. Etc., 2016 (10) SCC 315, and H.V. Vedavyasachar Vs. Shivashankara & anr., 2009(4) RCR (Civil) 172, Shanti Devi Vs. Daropti Devi & ors., 2007(1) RCR (Civil) 411, Lekhraj Bansal Vs. State of Rajasthan & anr., 2015(7) RCR (Civil) 473, N. Kamalam (dead) Vs. Ayyasamy, 2001 (4) RCR (Civil) 193 and judgment of this Court in Malook Singh Vs. Satnam Singh, 2006 (4) RCR (Civil) 92 *inter alia* contends that a party can only be permitted to adduce additional evidence under Order 41 Rule 27 CPC on three grounds; 1) the same was not in his knowledge, 2) it could not be produced despite exercise of due diligence 3) or it was the result of some subsequent event. The respondents-plaintiff did not prove any of such ground. Therefore, the Lower Appellate Court ought not to have allowed them to lead additional evidence. That apart, the Appellate Court instead of remanding the case to the trial Court was required to decide the same itself.

The Appellate Court failed to appreciate that the documents sought to be produced by way of additional evidence by the respondent-plaintiffs were inserted in the Lower Court file illegally being not signed by the Presiding Officer or any Court staff. Even the date of their filing in the index form was interpolated.

On the other hand, learned counsel for the respondents-plaintiff controverting the above submissions pleaded the legality and validity of the impugned order. He relies on the decision of this Court in Gurdial Singh & ors. Vs. Mam Chand & ors., 2011 AIR CC 195 and Ram Niwas Vs. Kalu Ram & anr., 2012 (4) RCR (Civil) 56.

Having given anxious consideration to the submission made by learned counsel for the parties, I find that the instant appeal is liable to be accepted partly for the reasons to follow.

The documents sought to be produced by the respondents-plaintiff are revenue document in the shape of jamabandis, which could not be fabricated by them. Therefore, the appellate Court has not erred in allowing the application for additional evidence of the respondents-plaintiff to produce certain jamabandis which could not be produced on account of the lapse of their counsel. For the lapse of their counsel; respondents-plaintiff could not be penalized, inasmuch as the endeavour of the Court should always be to impart justice and not to non-suit a litigant on technical ground. In the instant case, the Appellate Court has observed that the defendants including the appellant were claiming themselves to be co-sharers in the suit land being successors of co-sharer- Jaggo, a Rai Sikh by caste, whereas the respondents-plaintiff are Jat Sikhs. Therefore, to clarify such a major discrepancy, jamabandis were very much required to be proved on record to

arrive at just and fair conclusion to decide legal rights of the parties. Since under Order 41 Rule 27 CPC, the Appellate Court is empowered to take additional evidence, therefore, it has not committed any error.

However, considering the citations relied upon by learned counsel for the appellant, this Court is of the considered view that the Appellate Court instead of remanding the case to the trial Court, ought to have directed it to take additional evidence of the respondents-plaintiff and send a report to it for adjudication of the appeal on merit.

In view of the submissions made above, impugned judgment of the Appellate Court is partly upheld to the extent of allowing the application of respondents-plaintiff for additional evidence to produce Jamabandis and revenue record and remanding the case to the trial Court for recording the evidence of both the sides. However, direction of the Appellate Court qua directing the trial Court to decide the case afresh is rejected with the direction to the Appellate Court to decide the same itself after calling the report from the trial Court qua additional evidence sought to be led by the respondents-plaintiff and rebuttal if any, by the respondents-defendant.

Disposed of accordingly.

12.07.2019
monika

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No