

**sIN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**SAO No. 11 of 2018 (O&M)**

**Date of Decision: 08.05.2019**

Ravinder and another

...Appellants

**VERSUS**

Daryao Singh and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Rajnikant Upadhyay, Advocate  
for the appellants.

Mr. N.K. Malhotra, Advocate  
for respondent no. 1.

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**SURINDER GUPTA, J. (Oral)**

Heard.

Against dismissal of his suit by the trial Court, plaintiff-respondent no. 1 filed appeal before Additional District Judge, Rohtak. During pendency of appeal he moved application seeking permission to produce additional evidence, which was allowed with the observations as follows:-

*“13. As such, the relief sought in the present case pertains to the nature of the suit property. The suit of the appellant-plaintiff shall succeed, if he is able to prove that the suit property was ancestral in nature in the hands of respondent-defendant No.1. The suit of the appellant-plaintiff shall fail, if he fails to prove that the suit property was ancestral in nature in the hands of respondent-defendant No.1. By way of filing the present application for additional evidence, the appellant-*

*plaintiff wants to place on record the revenue documents for the purpose of proving the nature of the suit property. The said documents are essential for the just and proper adjudication of the present case. In these circumstances, it can be held that the documents i.e. mutation No.574 sanctioned on 12.6.1904, mutation No.583 sanctioned on 12.6.1904, mutation No.584 sanctioned on 12.6.2004 and mutation No.526 sanctioned on 18.9.1985 sought to be placed on record by way of additional evidence are essential one for the proper adjudication of the matter in dispute. Accordingly, the application for production of additional evidence filed by the applicant-appellant/plaintiff is hereby allowed.*

14. *Resultantly, the appeal filed by the appellant-plaintiff is accepted and the impugned judgment and decree dated 7.7.2015 passed by the learned Civil Judge( Junior Division), Rohtak are set aside and the matter is remanded back to the learned trial/successor Court with the direction to decide the case afresh after taking additional evidence of the appellant/defendant as allowed by this Court.....”*

Learned counsel for the appellants has argued that allowing of additional evidence could not be a reason to set aside well reasoned judgment of the trial Court. On allowing of additional evidence, Ist Appellate Court could proceed further in the matter as per provisions of

Order XLI Rule 28 CPC.

Learned counsel for respondent no. 1 has argued that documents produced are material documents and will effect merits of the case, as such, case was remanded. The dispute between parties is regarding nature of land. Respondent no. 1 is alleging the same to be joint Hindu family coparcenary property and has sought permission to produce revenue record to prove this fact. In case nature of property is proved to be joint Hindu family coparcenary property, trial Court is required to record fresh findings on all the issues framed in this case.

Order XLI Rule 28 CPC reads 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.”***

Allowing of application for permission to lead additional evidence filed by either party in the appeal is not a ground to set aside judgment and decree passed by the trial Court. The option before Ist Appellate Court is either to take additional evidence on record and then proceed to decide the appeal on merit or to call upon the subordinate Court to take such evidence and send the same to the Appellate Court for disposal of appeal on merit.

Ist Appellate Court instead of following the procedure provided under Order XLI Rule 28 CPC set aside the judgment of trial Court without

recording any finding or reason for the same.

As a sequel of my above discussion, this appeal is accepted. Parties are directed to appear before Ist Appellate Court/successor Court on 30.05.2019, on which date, file of Civil Appeal No. 21 of 2015 shall be taken on board and proceeded further as per above observations.

May 08, 2019  
*jk*

( SURINDER GUPTA )  
JUDGE

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

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