

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 46 of 2018 (O&M)

Date of Decision: 27.05.2019

Surinder Singh

...Appellant

VERSUS

Tirath Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Satinder Khanna, Advocate
for the appellant.

Mr. Naveen Upadhyay, Advocate
for respondent no. 1.

SURINDER GUPTA, J. (Oral)

Heard.

Suit filed by respondent no. 1-Tirath Singh seeking the relief of permanent injunction with regard to plots no. 105 and 106 situated in village Meharban, Tehsil and District Ludhiana was dismissed by Civil Judge (Junior Division), Ludhiana. He preferred appeal before Additional District Judge, Ludhiana, wherein an issue was raised that the application filed by plaintiff-respondent no. 1 seeking permission to lead additional evidence i.e. *jamabandi* of suit land was wrongly declined. Learned Ist Appellate Court found order of lower Court declining the permission to plaintiff-respondent no. 1 to place on record *jamabandi* of suit property in additional evidence as not tenable. The application to this effect moved before lower Appellate Court was allowed with observation that “it will assist lower Court to reach a rightful conclusion” and the case was remanded to learned trial Court to take on record additional evidence and decide the same afresh.

Learned counsel for the appellant has argued that allowing of additional evidence by learned Ist Appellate Court could not be a reason to set aside a well reasoned judgment of learned trial Court. Instead of proceeding as per provisions of Order XLI Rule 28, learned Ist Appellate Court adopted a shortcut method to dispose of the appeal by remanding the case.

Learned counsel for respondent no. 1 has argued that evidence sought to be produced by way of additional evidence is very material to prove title of plaintiff over the suit property. This document was not allowed to be proved on record by learned trial Court while dismissing the application on the sole ground that it was moved at a very late stage. The findings of learned trial Court on other issues will be effected on perusal and appreciation of this document, as such, learned Ist Appellate Court has rightly set aside the judgment of learned trial Court while allowing the additional evidence.

Order XLI Rule 28 CPC deals with mode of taking additional evidence in appeal, which reads as follows:-

“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.”

It is apparent from perusal of above provision that in the event of additional evidence being allowed, the Appellate Court may either take such evidence of its own or get the same recorded from subordinate Court.

However, allowing of additional evidence cannot be a reason to set aside the judgment of Court below. Instead, Appellate Court after recording additional evidence as per law is required to proceed further to decide the appeal on merit.

In view of above discussion, I am of the opinion that the order passed by Additional District Judge, Ludhiana remanding the case to learned trial Court for fresh decision only for the reason that additional evidence allowed to plaintiff-respondent no. 1, is perverse and not sustainable, as such, is set aside.

As a sequel of my above discussion, this appeal has merit and is accepted. Additional District Judge/successor Court is directed to proceed further to decide the appeal on merit in view of above observations.

Parties are directed to appear before learned Ist Appellate Court/successor Court on 05.07.2019, on which date appeal file shall be taken on board and proceeded further to dispose of the same in accordance with law.

May 27, 2019
jk

(SURINDER GUPTA)
JUDGE

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

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