

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 56 of 2018 (O&M)
Date of Decision: 20.05.2019

Paramjeet

....Appellant

VERSUS

Baljeet Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Neha Sharma, Advocate
for Ms. Swati Verma, Advocate
for the appellant.

Mr. Chandandeep Singh, Advocate
for the respondent.

SURINDER GUPTA, J. (Oral)

Heard.

This is appeal by defendant-Paramjeet against order dated 19.04.2018 passed by Additional District Judge, Ludhiana, whereby in appeal filed by plaintiff-Baljeet Singh, judgment and decree passed by lower Court was set aside and the case was remanded for fresh decision as the lower Appellate Court had permitted the plaintiff opportunity to lead additional evidence to prove the sale deed and copy of *jamabandi* regarding the suit property.

The only question, which arises for consideration in this appeal, is as to whether allowing of additional evidence could be a sole reason to remand the case? To find answer to query, it is required to refer to provisions of Order XLI Rule 28 CPC, 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.”

Learned lower Appellate Court appears to have passed the remand order under a wrong notion that in case application under order XLI Rule 27 CPC is allowed the case is to be remitted back to learned trial Court. This view of learned lower Appellate Court is reflected from observation in para 12 of the order, which reads as follows:-

“12.Still further, if this Court is of the view that in order to succeed for the relief of specific performance of agreement dated 03.05.2010, the plaintiff is bound down to prove the ownership of defendant over suit property, the plaintiff should be permitted to lead additional evidence on the application Under Order 41 Rule 27 Code of Civil Procedure and after allowing the application the matter should be remitted back to the Learned Trial Court to decide the case afresh after the plaintiff shall lead evidence as prayed for.”

As is clear on perusal of provisions of Order XLI Rule 28 CPC that the lower Appellate Court after allowing the additional evidence may record the same of its own or send the file to lower Court to record additional evidence and then send the file to it for decision of the appeal on merit.

As a sequel of my above discussion, this appeal has merit and is accepted. Order passed by learned Ist Appellate Court is not legally

tenable in the eyes of law and is set aside.

Parties through their counsel 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 decide the same as per above observations.

May 20, 2019

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No