

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

288

RSA-1409-2013 (O&M)

Date of decision: 06.02.2020

LAKHBIR SINGH AND ORS

... Appellants

Versus

RAJESH KUMAR

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. HS Batth, Advocate for the appellants.
Mr. Veneet Sharma, Advocate for the respondent.

REKHA MITTAL, J. (Oral)

CM No.3768-C of 2013

Heard.

Allowed as prayed for. Delay of 20 days in re-filing the appeal stands condoned.

Main Case

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby counter claim filed by the appellants/defendants in a suit for permanent injunction regarding suit property (later withdrawn) has been dismissed.

One of the issues before the Courts was 'whether the appellants/defendants are owners of the suit property and entitled to recover its possession from the respondent in the counter claim'.

Counsel for the appellants would argue that the appellants filed application under Order 41 Rule 27 (b) read with Section 151 CPC for additional evidence in respect of documents detailed in sub paras (a) to (d) of para 4 of the application. It is further submitted that one of the documents sought to be produced by way of additional evidence is agreement to sell dated 15.06.1974 purported to be executed by Smt. Pritam Kaur in favour of father of respondent Rajesh Kumar. It is further submitted that though the appellate Court in various zimini orders have referred to filing of the application for additional evidence but disposed of the appeal without deciding application for additional evidence. It is vehemently argued that since the documents sought to be produced by way of additional evidence

have strong bearing on deciding the question of ownership of the suit property, judgment and decree passed by the Court in appeal may be set aside and matter be remitted to the appellate Court for decision of the appeal afresh.

Counsel for the respondent has supported consistent findings recorded by the Courts.

Be that as it may, it is undisputed position of the case that the appellants/counter claimants filed the aforesaid application seeking permission of the appellate Court for adducing additional evidence. Perusal of the zimini orders recorded by the appellate Court makes it evident that the Court adjourned the appeal on number of occasions for filing of reply without appreciating that the respondent was proceeded ex parte before the appellate Court. However, it remains a fact that the appellate Court disposed of the appeal without deciding application for additional evidence. Taking into consideration the submissions made by counsel for the appellants coupled with judgment of Hon'ble the Supreme Court **Jatinder Singh and another minor through mother vs. Mehar Singh and others alongwith connected case, 2009(1) RCR (Civil) 253**, decree and judgment passed by the first appellate Court is set aside and the matter is remitted to the first appellate Court (successor Court of Sh. JS Kang, the then Additional District Judge, Amritsar) for decision of the appeal afresh by disposing of the application for additional evidence. Parties through their counsel are directed to appear before the appellate Court on 03.03.2020. The appellate Court shall decide the appeal within three months of the parties putting in appearance.

06.02.2020

ashok

(REKHA MITTAL)
JUDGEWhether speaking/reasoned:
Whether reportable:Yes / No
Yes / No