

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3854 of 2016 (O&M)
and other connected case
Date of Order:28.02.2020

Madan Lal

..Appellant

Versus

Harjit Kaur

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Deepak Nayar, Advocate
for the appellant.

Mr. Akhilesh Vyas, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

By this order, Regular Second Appeal No.3854 of 2016 and
5465 of 2015 shall stand disposed of.

Defendant-appellant has filed the present regular second appeal
against the concurrent findings of fact arrived at by the Court below.

On 05.08.2016, following order was passed:-

Learned counsel for the appellant submits that the appellant had filed an application under Order 41 Rule 27 CPC read with Section 151 CPC, for leading additional evidence in the form of a notification issued by the Government of Punjab, with regard to gazetted holidays, showing that 10.10.2003 was actually a holiday on the account of the birth anniversary of Maharishi Valmiki. The said date was the date by which the sale deed was to be executed and on that date the respondent/plaintiff claimed to be present in the office of Sub Registrar to execute the same. He had also filed an application under Section 151 CPC to place on record

an enquiry report by the SDM, Amritsar-II, stating therein that the aforesaid date was in fact a holiday and that the Sub Registrar / Naib Tehsildar whose signatures were stated to be appended on the document, showing the presence of respondent/plaintiff in the office of Sub Registrar, were not actually of that Naib Tehsildar.

Mr. Rekhi, learned counsel for the caveator (respondent/plaintiff), has submitted that the said SDM was never examined in Court to prove the aforesaid enquiry report.

Learned counsel for the appellant however submits that there was no opportunity given to the appellant to lead evidence in the form of examination of the SDM, in view of the fact that the application stood simply allowed by one line at the end of the judgment of the learned lower appellate Court, by which the appeal of the appellant was dismissed, thereby upholding the decree in favour of the respondent / plaintiff.

Notice of motion.

Since the respondent is here on caveat, duly represented by Mr. Rekhi, she stands served through learned counsel.

For arguments, adjourned to 28.09.2016. In the meanwhile, records of the courts below be summoned.

Execution of sale deed shall remain stayed till the next date of hearing only.

Thereafter, the case came up for hearing on 14.02.2020 and the following order was passed:-

Learned counsel for the appellant contends that learned First Appellate Court after allowing application filed under Order 41 Rule 27 CPC did not grant opportunity to the appellant to lead additional evidence.

This case was dismissed for non-prosecution on 18.12.2018. Due to which, record of the Courts below

requisitioned earlier was sent back. On 24.09.2019, this matter has been restored to its original number.

Let office requisition the record of the Courts below again through Special Messenger on the charges to be deposited by the appellant.

List on 28.02.2020 in the urgent for final arguments.

In the meantime, learned counsels may inspect the record of the Courts below, if received before the next date of hearing.

Interim order to continue.

Learned counsel for the respondent admits that apart from an application under Order 41 Rule 27 of the Code of Civil Procedure for permission to lead additional evidence, another application under Section 151 of the Code of Civil Procedure was also filed for permission to place on record the necessary report. He admits that the aforesaid application has not been decided.

RSA No.5465 of 2015 is also pending between the same parties.

Learned counsels for the parties have arrived at a consensus that let both the appeals be re-decided by the learned first appellate court in view of the peculiar facts of the case.

Keeping in view the aforesaid facts and the consensus arrived at, it is considered appropriate to set aside the judgments and decrees passed by the learned first appellate court in both the appeals with a request to re-decide the appeals in accordance with law after considering all the applications which are pending or decided. It is expected that the learned first appellate court shall follow the procedure as prescribed in law.

Parties through their counsels are directed to appear before the

learned first appellate Court, on 12.03.2020.

Both the appeals are disposed of accordingly.

February 28, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No