

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

RSA No. 2840 of 2018 (O&M)

Date of decision: 04.03.2020.

Joginder Pal Monga and another Appellants.

Versus

Jasjit Singh Respondent.

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Arun Jain, Senior Advocate, with
Mr. Akash Deswal, Advocate, for the appellants.

ANUPINDER SINGH GREWAL, J. (ORAL)

The appellants/defendants have challenged the judgment and decree of the Appellate Court whereby their appeal has been dismissed.

Learned senior counsel for the appellants/defendants contends that the appellants/defendants had filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 ('CPC' - for short) for additional evidence before the Appellate Court on 20.01.2017 during pendency of the appeal. Notice had been issued in the application to the non-applicant/respondent/plaintiff, but the application has not been decided by the Appellate Court although the appeal of the appellants/defendants was finally decided on 24.07.2017. He also contends that it was necessary for the Appellate Court to decide the application for additional evidence and only thereafter the appeal could have been decided. He has relied upon the judgment of the Supreme Court in the case of Malayalam Plantations Ltd. v.

State of Kerala and another, (2010) 13 SCC 487.

Issue notice to the respondent/plaintiff.

Mr. Sanjeev Kumar Arora, Advocate, accepts notice on behalf of the respondent/plaintiff. He has not been able to controvert the submissions made by learned senior counsel for the appellants/defendants that the application preferred by the appellants/defendants for additional evidence has not been decided by the Appellate Court.

Heard.

It is not in dispute that on 21.01.2017 an application was preferred by the appellants/defendants for additional evidence before the Appellate Court. The Appellate Court has not decided this application although the appeal has been decided on 24.07.2017. It has been held by the Supreme Court in the case of Malayalam Plantations Ltd. (supra) that upon an application under Order 41 Rule 27 CPC being preferred during pendency of the appeal, it is incumbent upon the Appellate Court to consider and decide the same at the time of final decision of the appeal on merits as to whether the documents or the evidence sought to be adduced have any relevance/bearing on the issues involved.

Therefore, without expressing any opinion on the merits of this appeal, the judgment and decree dated 24.07.2017 passed by the Appellate Court are set aside. The matter is remanded back to the Appellate Court to decide the application of the appellants/defendants for additional evidence and the appeal afresh in accordance with law. The Appellate Court shall dispose of the matter expeditiously preferably within a period of six months from today. The parties shall appear before the Appellate Court on 19.03.2020.

The appeal is disposed of in the aforesaid terms.

04.03.2020
Ramesh

(ANUPINDER SINGH GREWAL)
JUDGE

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