

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

RSA No.6368 of 2014 (O&M)

Date of Decision: 02.03.2020

Sanjay Kumar

..... Applicant-Appellant

Versus

Smt.Sita Devi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Dinesh Kumar Prajapati, Advocate,
for the applicant-appellant.

Mr.Raghuvinder Singh, Advocate,
for the respondents.

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ANIL KSHETARPAL, J. (Oral)

CM No.15228-C of 2014

Delay of 216 days in filing the appeal is condoned for the reasons stated in the application, which is supported by an affidavit. It has been pleaded by the applicant-appellant that he is a poor person and had suffered paralyses and, therefore, unable to walk.

RSA No.6368 of 2014 (O&M)

The plaintiff-appellant has filed the present regular second appeal against the judgments passed by the Courts below.

The plaintiff prays for passing a decree for declaration to the effect that he is exclusive owner of the firm M/s. M.S. Mall Engineering Works, Jhangra Niwas, Near Rampur Chowk, Jagadhri Road, Ambala Cantt., with the consequential relief for perpetual injunction.

The plaintiff claims that late Shri Joginder Singh, his father,

had bequeathed the suit property by virtue of his last Will dated 3rd May, 2002, registered with the sub-Registrar, Ambala Cantt. The defendants contested the suit and denied existence of the Will. The suit was also contested on various other grounds like the property is ancestral and Shri Joginder Singh had no right to execute the Will.

Learned trial Court dismissed the suit as the plaintiff failed to prove the original registered Will.

Before the learned first Appellate Court, plaintiff filed an application under Order 41 Rule 27 CPC for permission to lead additional evidence in order to produce the original Will, the primary evidence. Learned first Appellate Court dismissed the application on the ground that plaintiff was in knowledge of the Will as his suit was based thereon. Hence, in the absence of sufficient reason for non-production before the trial Court, the application was dismissed.

Order 41 Rule 27 CPC reads as under:-

“27. Production of additional evidence in Appellate Court – (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall

record the reason for its admission.”

“Clause (b) of Sub Rule (1) of Rule 27 enables the Appellate Court to permit production of any document, which would help the Court to pronounce judgment or for any other substantial cause. Such power is to advance the cause of justice. Rules of procedure are meant to advance cause of justice and not to scuttle it.

Hence, this Court is of the considered view that the first Appellate Court is erred in refusing to allow application for permission to lead additional evidence so as to produce original registered Will.

Keeping in view the aforesaid facts and without commenting on merits of the case, it is considered appropriate to set aside the judgment of the learned Appellate Court and remit the appeal back to First Appellate Court to re-decide after permitting the plaintiff-appellant to prove the registered Will.

Needless to observe that counter opportunity shall also be granted to the defendants to lead additional evidence.

Parties through their counsel are directed to appear before the first Appellate Court on 16th March, 2020. Learned first Appellate Court is requested to decide the appeal positively within a period of nine months.

Office is requested to remit the record immediately.

2nd March, 2020
P.Seth

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No