

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

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RSA No.204 of 2023(O&M)

Date of decision: 25.04.2023

Anjana Rani Bisht

....Appellant

V/s

Jagdip Singh Chandail and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Sumeet Mahajan, Senior Advocate, with
Mr. Saksham Mahajan, Advocate, for the appellant.

Mr. Kushagra Mahajan, Advocate,
for respondent Nos.1, 2, 3 and 6.

VIKAS SURI, J. (Oral)

This regular second appeal has been preferred by the plaintiff-appellant against the judgments and decree passed by the Courts below.

Learned senior counsel for the appellant submits that the plaintiff-appellant had filed a suit for declaration to the effect that she has 1/4th share in moveable/immovable properties left by her father Tikka Jagjit Singh and that the registered Will dated 01.09.2000 alleged to be executed by her late father, is illegal and not binding on the rights of the plaintiff-appellant and for declaration to the effect that she is joint owner in possession of the suit land with consequential relief of permanent injunction, restraining the defendant-respondents from alienating the suit property as well as withdrawing the amount of compensation awarded in lieu thereof, was also prayed for.

On notice, the defendants contested the suit and after evidence was led by the both sides, the suit was dismissed vide judgment and decree

dated 23.09.2016.

The plaintiff-appellant challenged the said judgment and decree before the first Appellate Court. During the pendency of the first appeal, an application under Order 41 Rule 27 CPC for leading additional evidence was also filed. The appeal was dismissed with costs vide judgment and decree dated 30.09.2022.

Thereafter, the plaintiff-appellant has carried the dispute to this Court by way of the instant regular second appeal.

At the very outset, learned senior counsel appearing for the appellant submits that the application under Order 41 Rule 27 CPC for leading additional evidence instituted on 05.08.2021 has not been decided by the first Appellate Court and direct consequence of the same has resulted in miscarriage of justice.

On notice, Mr. Kushagra Mahajan, Advocate has put in appearance on behalf of respondent Nos.1, 2, 3 and 6 , whereas service on respondent Nos.4 and 5 was dispensed with, as the said respondents were *ex parte* before the first Appellate Court.

I have heard learned counsel for the parties and with their able assistance have perused the record of the case.

Learned counsel for the respondents does not dispute the factual position noticed above and submits that the present appeal be disposed of at the motion stage itself, as in view of the law settled by the Apex Court, the matter has to be remanded to the first Appellate Court for decision afresh after deciding the application under Order 41 Rule 27 CPC. Hence, the admission of the appeal would not be in the interest of either of the parties.

Learned senior counsel has placed reliance on the decision of

the Apex Court in *Sanjiv Goel vs. Avtar S. Sandhu*, (2006) 9 SCC 748.

The relevant portion of which reads as under:-

“2. In the present appeal, at the outset, the learned counsel for the appellant brought to our notice the fact that an application under Order 41 Rule 27 CPC filed by the appellant before the learned Additional District Judge has remained pending throughout as no orders were passed on the said application by the learned Additional District Judge or by the High Court. The learned counsel appearing for the respondent is unable to dispute this fact that the said application has not been disposed of so far. Without expressing any opinion on the merits of the claim of the appellant in his application under Order 41 Rule 27 CPC, we are of the view that the said application ought to have been disposed of by the learned Additional District Judge before deciding the appeal which was pending before him. Non-disposal of the said application has led to the miscarriage of justice. Accordingly, we set aside the impugned judgment of the High Court as well as the judgment dated 22.07.1997 of the learned Additional District Judge, Jalandhar and remand the matter back to the District Judge, Jalandhar for assigning the case to an appropriate court for decision of the appeal as well as the application of the appellant under Order 41 Rule 27 CPC on merits in accordance with law. This appeal is disposed of accordingly. The parties to bear their own costs.”

Learned counsel for the parties are *ad idem* that there is no other contrary view than the one noticed above, rather in many other decisions, same view has been reiterated by the Apex Court.

In light of the above discussion and the submissions made by learned counsel for the parties, without expressing any opinion on the merits of the claim of the appellant or that made in the application under Order 41 Rule 27 CPC, I am of the considered view that the said application ought to

have been disposed of by the first Appellate Court before deciding the appeal, which was pending before him.

In view the of the above, the present regular second appeal is allowed and the impugned judgment and decree dated 30.09.2022, passed by the first Appellate Court is set aside and the matter is remanded back to the first Appellate Court for decision afresh, after first deciding the pending application under Order 41 Rule 27 CPC. Both the parties would be at liberty to make their submissions before the Court below, including additional submissions, in accordance with law.

However, keeping in mind the fact that the first appeal was instituted on 03.11.2016 and much time has gone by since then, the first Appellate Court is requested to dispose of the matter expeditiously, preferably within a period of six months from the date of receipt of a certified copy of this order.

This regular second appeal is disposed of in the aforesaid terms.

(VIKAS SURI)
JUDGE

April 25, 2023
vcgarg

Whether speaking/reasoned:	Yes
Whether reportable:	No