

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

CR-1379-2020 (O&M)

Date of decision: 11.05.2023

Bal Krishan

...Petitioner

VS

Madan Gopal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashish Gupta, Advocate,
For the petitioner.

Mr.B.S.Beniwal, Advocate,
For contesting respondent No.1.

Respondents No.2 to 8 dispensed with vide order dated
17.01.2023.

ARUN MONGA, J. (ORAL)

Revision petition herein *inter alia* is to set aside impugned order dated 11.02.2020 (Annexure P-5) passed by learned Additional District Judge, Fatehabad whereby application filed by respondent/plaintiff under order 41 Rule 27 CPC, was allowed.

2. Learned counsel for petitioner submits that plaintiff/respondent No.1 filed a suit for declaration and permanent injunction which was dismissed by learned trial Court. The same was challenged by plaintiff by filing appeal before learned Appellate Court. In the appeal, an application under Order 41 Rule 27 CPC for additional evidence was filed seeking permission to summon and examine Shri Shamsher Singh Malik, Handwriting and Finger Print Expert, Hisar to prove report dated 05.05.2019, which was allowed. Hence, the civil revision.

3. Learned counsel for contesting respondent No.1 strenuously opposes the revision petition and supports the impugned order being based on correct findings.

4. I have heard learned counsel for the parties and gone through the case file.

5. Having heard the arguments, I am unable to persuade myself for holding that the impugned order is not sustainable as has been strenuously argued by learned counsel for petitioner. Primarily, learned counsel has laid over-emphasis on the fact that once learned Trial Court has pronounced the judgment and decree, there was no occasion for learned Appellate Court to entertain the additional evidence as ingredients of Order 41 Rule 27 CPC are not made out. Furthermore, he would argue that the application seeking additional evidence was filed after a period of 5 years of filing the appeal.

6. First and foremost, trite it is to observe that first appeal against judgment and decree dated 26.02.2015 (Annexure P-1) of learned Trial Court is nothing but continuation of the suit itself, where the exercise of fact finding is carried out *de novo* by learned First Appellate Court after re-appreciation of entire evidence. It is thus discretion of learned Appellate Court given the facts and circumstances of the case, in case it so feels that additional evidence is required to enable it to pronounce judgment or for any other substantial cause, same may be permitted at any stage, regardless of the appeal having been pending for 5 years, as in the present case.

7. Furthermore, the order allowing application of plaintiff is premised primarily on the following reasoning contained in para 5 of impugned order:

“5. After hearing learned counsel for the parties and having gone through the record carefully, I am of the considered opinion that the present application deserves to be accepted. No doubt, the above said expert was not examined during the trial and he could have been examined at the appropriate state, but in the present case, the controversy is regarding the fabrication of signatures of the appellant/plaintiff on the affidavits in dispute which were presented before the Estate Officer, HUDA for transferring the share of the appellant/plaintiff in favour of the respondent/defendant Bal Kishan. There appears to be some bonafide mistake of legal advice given by his counsel. For that a party should not be condemned and proper method would be to allow the application in hand so that real controversy may be decided in an effective manner. There is no bar to allow such application when the proposed evidence is proper and necessary for the proper decision of the case. If there is some bonafide mistake, the other party may be compensated with costs. Mere acceptance of the application, it does not mean that the court is going to decide the case in favour of the application. The only contingency would be that an effect opportunity should be given to the parties. The opposite party would always have liberty to rebut the proposed evidence. The judgments referred to above by learned counsel for the respondent are not applicable under the facts and circumstances of the case in hand.”

8. Perusal of the above clearly reflects that it was not on his own volition that plaintiff did not adduce evidence when he may have been aware of its existence. It was a *bonafide* mistake on his part under the legal advice tendered to him that despite having knowledge thereof, he did not adduce evidence before learned Trial Court.

9. It appears that position continues to be same after filing the appeal and it is only when learned counsel representing him was preparing case for final arguments that fallacy came to the knowledge of learned counsel representing him and he advised him to carry out the corrective measures. In this context, reference may be had to Order 41 Rule 27 CPC, more particularly Sub rule (aa) thereof, wherein it is clearly envisaged that even if a party had the knowledge but after exercise of due diligence he yet does not produce the additional evidence, but if it is found that the same is

warranted in the facts and circumstances of the case, Court is at liberty to allow the same by recording reasons thereof. Order 41 Rule 27 Sub rule (aa)

CPC, being relevant, is as below:

XXX XXX
“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.....”

10. In the instant case, learned Appellate Court has recorded valid reasons for allowing the application. I see no grounds to interfere.

11. Dismissed.

12. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

11.05.2023
vandana

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