

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(260)

RSA-3736-2019 (O&M)

Date of Decision : April 19, 2023

Ashwani Kumar

.. Appellant

Versus

Naurang Lal (deceased) Through his LRs and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sameer Sachdeva, Advocate, for the appellant.

Mr. R.K. Girdhar, Advocate, for respondents No. 1, 3, 5 to 14.

Mr. S.P. S Tinna, Advocate, for respondents No. 5, 7, 8, 11 and 13.

Mr. Manoj Kumar Sood, Advocate,
for respondents No. 15 to 23.

Mr. K.B. Raheja, Advocate, for respondent No.12.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-2322-C-2023

Present application has been filed for preponing the date of hearing of the main appeal from 13.04.2023 to an early actual date.

As the main appeal is listed today, present application has become infructuous.

CM stands disposed of as infructuous.

CM-10129-C-2019

As prayed for, the application is allowed.

Annexures A-1 to A-6 are taken on record.

RSA-3736-2019

Present Regular Second Appeal has been filed challenging the

judgment and decree of the lower Appellate Court dated 23.04.2019 by which the appeal filed by the appellant-defendant has been dismissed with cost and the judgment and decree of the trial Court dated 18.05.2015 has been upheld by the lower Appellate Court.

Learned counsel for the appellant argues that when the matter was pending before the lower Appellate Court, an application was filed for leading additional evidence under Order 41 Rule 27 of the CPC. The said application was filed on 01.04.2016 and even the reply to the same was filed by the respondents on 16.08.2016, copy of which has been appended as Annexure A-3 with the paper book but no decision was rendered by the lower Appellate Court on the said application whereas, the main appeal was decided by the lower Appellate Court vide judgment and decree dated 23.04.2019.

Learned counsel for the appellant further submits that keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.2699 of 2008 titled as Hakam Singh vs. State of Haryana and others, decided on 09.04.2008***, any application filed for adducing an additional evidence is to be decided prior to the decision of the issue concerned and without deciding the said application, final order passed cannot be sustained.

Learned counsel for the respondents has not been able to dispute the said factum that before the lower Appellate Court, an application under Order 41 Rule 27 of the CPC was filed for leading additional evidence, which remained pending upto the date of the final decision of the appeal by the lower Appellate Court on 23.04.2019.

I have heard learned counsel for the parties and have gone

through the record with their able assistance.

From the record, it transpires that the application filed under Order 41 Rule 27 of the CPC before the lower Appellate Court remained pending consideration even up to the date of final judgment and decree passed by the lower Appellate Court on 23.04.2019. That being so, the issue in question is covered by the judgment of the Hon'ble Supreme Court of India in ***Hakam Singh's case (supra)***. The relevant paragraph of which is reproduced hereinafter.

“4. Without going into the facts in detail, these appeals can be disposed of on a very short point. It is an admitted position that an application under Order 41 Rule 27 of the Code of Civil Procedure (In short "CODE") for acceptance of additional evidence was filed before the High Court in the aforesaid First Appeals, which were dismissed by the High Court by the impugned order. However, the application for acceptance of additional evidence under Order 41 Rule 27 of the CODE was not considered by the High Court while disposing of the appeal.

5. That being the position, without going into the legality and propriety of the impugned order of the High Court passed in the aforesaid appeals, we set aside the same and remit back the cases to the High Court for decision of the Appeals afresh on merits and in accordance with law along with the application for acceptance of additional evidence under Order 41 Rule 27 of the CODE.

6. Accordingly, the impugned order is set aside. The High Court is requested to dispose of the First Appeals in the light of the observations and directions made hereinabove within three months from the date of supply of a copy of this Order along with application for acceptance of additional evidence under Order 41 Rule 27 of the CODE.”

Keeping in view the above, the judgment and decree of the lower Appellate Court dated 23.04.2019 is set aside and the case is remanded back to the lower Appellate Court to decide the appeal as well as the application afresh in accordance with law after giving due opportunity to the parties concerned.

As the parties are litigating since long, it will be appreciated that the lower Appellate Court decides the appeal within a period of six months from the first appearance of the parties concerned.

Parties are directed to appear before the lower Appellate Court on 17.05.2023.

It is made clear that the execution proceedings initiated on the basis of the judgment and decree of the Court below, will remain subject to the fresh order to be passed by the lower Appellate Court.

The present Regular Second Appeal is disposed of in above terms.

CM-10131-C-2019 and CM-15273-C-2019

As the main appeal has been disposed, of, present applications also stand disposed of.

April 19, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No