

RSA-552-2015 (O&M)

Date of Decision :18.01.2023

Shiromani Gurudwara Parbandhak Committee

...Appellant

versus

Iqbal Kaur And Ors

....Respondents

Coram : Hon'ble Mr. Justice B.S. WaliaPresent: Mr. Paramjit Singh Thiara, Advocate and
Mr. Apanjyot S. Virk, Advocate for the appellant.

B.S. Walia, J. (Oral)

1. Appeal is against judgment and decree dated 15.09.2014, passed by the learned Addl. District Judge, Patiala, upholding the judgment and decree dated 05.12.2012, passed by the learned Civil Judge (Junior Division), Rajpura, dismissing the suit for declaration filed by the appellant-plaintiff.

2. At the outset, learned counsel contends that the sole question which arises for consideration in the instant case is 'whether the impugned judgment and decree passed by the learned Addl. District Judge, Patiala, upholding the judgment and decree dated 05.12.2012, passed by the learned Civil Judge (Junior Division), Rajpura, dismissing the suit for declaration filed by the appellant-plaintiff without deciding the application under Order 41 Rule 27 CPC is legally unsustainable and is liable to be set aside and the case remanded for fresh decision of the appeal on merits, after deciding the application under Order 41 Rule 27 CPC.

3. Learned counsel contends that along with the appeal filed before the learned Addl. District Judge, Patiala, the appellant-plaintiff filed

an application under Order 41 Rule 27 of the CPC for permission to lead additional evidence for proving the death certificates of Harnam Kaur and Mangal Singh. Learned counsel contends that the same were essential for the effective adjudication of the case as the learned trial Court has dismissed the suit on the ground of absence of proof of death of Smt. Harnam Kaur and Mangal Singh besides proving the second Will dated 25.04.1994, executed by Mangal Singh, in favour of Gurudwara Shri DukhNiwaran Sahib, Patiala, subsequent to execution of Will in favour of his wife Smt. Harnam Kaur. Learned counsel contends that although the aforementioned application under Order 41 Rule 27 of CPC, was moved by the appellant-plaintiff before the learned Appellate Court but no decision was taken on the same while deciding the appeal, therefore, in view of the decision of Hon'ble the Supreme Court in **Sanjiv Goel vs. Avtar S. Sandhu 2006 (9) SCC 748** as followed by a Coordinate Bench of this Court in **Amandeep Singh vs. Sohan Singh and others 2016 (3) PLR 145** the impugned judgment and decree was liable to be set aside and the matter remanded for a fresh decision on the appeal after decision of the application under Order 41 Rule 27 CPC. Relevant extract of the decision of Hon'ble the Supreme Court in Sanjiv Goel's case (supra) is reproduced as under:-

2. However, it is the case of the appellant herein that the appeal pending before the Addl. District Judge, Jalandhar was disposed of without any order being passed on the application of the appellant under Order 41 Rule 27 of the CPC. This fact that no order was passed on the said application by the said court while disposing of the appeal is not disputed by the learned counsel appearing for the respondent-plaintiff. The appeal was dismissed by the Addl. District Judge vide his judgment dated

22.07.1997. The second appeal was filed against the judgment of the learned Addl. District Judge by the appellant. We have been taken through the grounds of appeal before the High Court in the second appeal and we find that the appellant had taken a ground before the High Court about his application under Order 41 Rule 27 having not been disposed of by the Addl. District Judge before passing the Final judgment in the appeal pending before him. In spite of a grievance having been made about the non-disposal of the application under Order 41 Rule 27, the High Court by its impugned judgment dated 13.11.1997 dismissed the appeal in limine without adverting to this aspect. There is no mention about the grievance of the appellant about his application under Order 41 Rule 27 having not been disposed of in the order of the High Court. 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 Civil Procedure Code filed by the appellant before the learned Addl. District Judge has remained pending Throughout as no orders were passed on the said application by the learned Addl. 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 Civil Procedure Code we are of the view that the said application ought to have been disposed of by the learned Addl. 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 Addl. 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 Civil

Procedure Code on merits in accordance with law. This appeal is disposed of accordingly.

4. Learned counsel has referred to paragraph No.7 of the grounds of appeal, in which, it has been mentioned that the application filed under Order 41 Rule 27 of the CPC, before the learned Addl. District Judge, Patiala, was not decided nor has any mention about the same been made in final judgment dated 15.09.2014.

5. Despite service none is present on behalf of the respondents. While noticing absence of the respondents despite service, on 10.01.2023, the case was adjourned for today. Today also none has put in appearance on behalf of the respondents nor has any request for adjournment or pass over been made.

6. In the light of position noted above as well as decision of Hon'ble the Supreme Court in Sanjiv Goel's case (supra) but without expressing any opinion on the merits of the claim of the appellant as made in the application under Order 41 Rule 27 of the CPC, I am of the considered view that the said application ought to have been decided by the learned Appellate Court before deciding the appeal, which was pending before it. Non-disposal of the said application is unsustainable. Accordingly, the impugned judgment passed by the learned Addl. District Judge, Patiala, dated 15.09.2014, is set aside and the matter remanded to the learned District Judge, Patiala, for assigning the case to the appropriate Court for fresh decision of the appeal after decision on the application under Order 41 Rule 27 of the CPC, on merit, in accordance with law.

- 7. The question of law arising in the instant appeal is answered accordingly.
- 8. Appeal allowed in the aforementioned terms.

(B.S. Walia)
Judge

18.01.2023
rajesh

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