

RSA-2827-2014 (O&M)
Date of Decision: 27.01.2023

Versus

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Mr. Rajan Bansal, Advocate,
for the respondents.

The essential argument raised by the learned counsel for the appellant is that before the lower Appellate Court; an application under Order 41 Rule 27 of the Code of Civil Procedure was also moved praying for leading additional evidence. However, without finally deciding the said application, judgment and decree dated 28.04.2014 have been passed by the lower Appellate Court. Learned counsel has also submitted that Hon'ble the Supreme Court in the case of **Harju (since deceased) through his proposed legal heirs and others Vs. Phulari (Smt) alias Churmarawati**

and others, 2005(10) SCC 191, has held that without deciding the application for additional evidence, final judgment and decree could not be passed.

In view of the above, the judgment and decree dated 28.04.2014 passed by the lower Appellate Court are set aside and the matter is remanded to the lower Appellate Court for deciding the appeal afresh; after taking a decision on the application under Order 41 Rule 27 CPC moved by the appellant.

(RAJBIR SEHRAWAT)
JUDGE

27.01.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No