

212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3273-2014 (O&M)
Date of Decision :16.03.2023

NITIN ...Appellant

Versus

MANOHAR LAL & ORSRespondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Vijay Kumar Jindal, Sr. Advocate with
Mr. Vijay Veer Singh, Advocate and Mr. Pankaj Gautam,
Advocate for the appellant.

None for the respondents.

B.S. Walia, J. (Oral)

[1] Challenge in the instant regular second appeal is to the judgment and decree dated 03.03.2014 in Civil Appeal No.CA-83/2012 passed by the learned Additional District Judge, Karnal upholding the judgment and decree dated 12.10.2011 passed by the learned Civil Judge (Jr. Div.), Karnal in Civil Suit No. 637 of 2008 in case titled as Nitin vs. Dr. Manohar Lal and others.

[2] Learned Senior Counsel assisted by Mr. Pankaj Gautam, Advocate and Mr. Vijayveer Singh, Advocate contends that the appellant/plaintiff had moved an application, Annexure A/1 for producing and proving the certified copy of statement of Shiv Kumar dated 20.10.2010 as CW-2 in evidence by way of additional evidence and

although notice was issued in the said application by the learned

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[2]

Additional District Judge, Karnal, yet no decision was taken on the same, therefore, in view of the decision of Hon'ble the Supreme Court in **Jatinder Singh & another Minor through Mother vs. Mehar Singh and others, 2009 (17) SCC 465** the impugned judgment and decree dated 03.03.2014 passed by the learned Additional District Judge, Karnal in Civil Appeal No.CA-83/2012 is liable to be set aside and the case remanded to the learned Additional District Judge, Karnal to decide the matter afresh after taking a decision on the application for additional evidence in accordance with law.

[3] Learned Senior counsel contends that despite all the respondents having been served none is present on behalf of the respondents nor has any power of attorney been filed on their behalf till date, therefore, the appeal be allowed and the matter remanded for a fresh decision in accordance with law after deciding the application under Order 41 Rule 27 CPC.

[4] I have considered the submissions of learned counsel.

[5] Hon'ble the Supreme Court in ***Jatinder Singh's case (Supra)*** has observed as follows:-

“4. While deciding the second appeal, however, the High Court had failed to take notice of the application under Order 41 Rule 27 of the Code of Civil Procedure and decide whether additional evidence could be permitted to be admitted into evidence. In our view, when an application for acceptance of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure was filed by the appellants, it was the duty of the High Court to deal with the same on merits. That being the admitted position, we have

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[3]

no other alternative but to set aside the judgment of the High Court and remit the appeal back to it for a decision afresh in the second appeal along with the application for acceptance of additional evidence in accordance with law.”

[6] Despite service none is present on behalf of the respondents, nor was the application for additional evidence decided by the learned Additional District Judge, Karnal despite his having issued notice on the same to the respondents/defendants and no objection in respect thereto having been given by some of the respondents/defendants for allowing the additional evidence to be taken on record.

[7] Learned Sr. Counsel contends that neither the application was decided nor the contents thereof taken into account while deciding the appeal.

[8] In view of the position noted above as well as no decision having been taken on the application under Order 41 Rule 27 CPC filed by the appellant/plaintiff before the learned Additional District Judge, Karnal in Civil Appeal No.CA-83/2012,the impugned judgment and decree dated 03.03.2014 passed by the learned Additional District Judge, is accordingly set aside and the matter remanded to the learned Additional District Judge, Karnal to decide the appeal afresh after first deciding the application under Order 41 Rule 27 CPC. Since, the matter pertains to a civil suit instituted in the year 2008, learned Additional District Judge, Karnal is requested to decide the matter afresh as expeditiously as possible.

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[9] Regular Second Appeal stands disposed of as above. All pending misc. applications also stand disposed of.

(B.S. Walia)
Judge

16.03.2023
'Amit'

- 1. Whether speaking/reasoned: Yes/No.
- 2. Whether reportable : Yes/No.