

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

(208)**RSA No.3994 of 2014 (O&M)****Date of Decision: 03.07.2023**

Bhupinder Singh and others

.....Appellants

Versus

Ravinder Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. G. S. Jaswal, Advocate, for the appellants.

Mr. Anil Chawla, Advocate, for the respondent No.4.

HARKESH MANUJA, J.(ORAL)

1. By way of present regular second appeal, challenge has been laid to the judgment and decree dated 29.05.2012 passed by the Court of Civil Judge (Junior Division), Amritsar, affirmed vide judgment dated 27.11.2013 passed by the Court of Additional District Judge, Amritsar, whereby a suit for declaration claiming ownership, filed at the instance of plaintiffs/appellants (hereinafter referred to as plaintiffs) stands dismissed.

2. Briefly stating, facts of the case as pleaded in the plaint are that one Tehal Singh was owner of suit property mentioned in the plaint who mortgaged 1/4th out of it vide registered mortgage deed dated 20.03.1957 in favour of Harbans Singh i.e. the father of plaintiffs No.1 and 3 as well as in favour of grandfather of plaintiff No.2. As per the plaint, the land was never got redeemed by the original owner i.e. Tehal Singh and thereby plaintiffs claimed to have perfected their title and become absolute owner in possession of the. Besides it, the plaintiffs also challenged an alienation made by one of the legal heirs of Tehal Singh i.e. defendant No.1 vide sale deeds dated 09.02.2004 and 25.02.2005 in favour of respondent No.4.

3. In response, defendants No.1 and 3 who chose not to appear were

proceeded against *ex-parte* whereas defendant No.2 though filed her written statement, however did not continue to appear and was proceeded against *ex-parte* on 02.02.2012. Besides it, defendant No.4/respondent No.4 contested the suit claiming himself to be *bona fide* purchaser for valuable consideration.

4. The trial Court vide judgment and decree dated 29.05.2012, dismissed the suit filed at the instance of plaintiffs/appellants *inter alia* on the ground that the old and new *khasra* numbers of the suit land could not be linked by the plaintiffs as reflected in jamabandi for the years 1950-1951 as compared to khasra numbers reflected in jamabandi for the year 2002-2003.

5. Aggrieved thereof plaintiffs/appellants filed first appeal along with an application under Order 41 Rule 27 Code of Civil Procedure seeking permission to lead additional evidence in the shape of *Khatuni Istemal, Naksha Haqdawar and Khatauni Paimaish* so as to establish the connectivity between the old and new *khasra* numbers. In the said application, notice was issued to the respondents by the first appellate Court vide its order dated 12.11.2013. Later, vide judgment dated 27.11.2013, the first appellate Court dismissed the first appeal filed at the instance of plaintiffs without even passing any order on the application filed under order 41 Rule 27 CPC.

6. While referring to the lower Court records, especially the records from the learned first appellate Court, learned counsel for the appellants submits that the first Appellate Court failed to pass any order on the application filed under Order 41 Rule 27 CPC; whereby permission was sought to produce and prove on record *Khatuni Istemal, Naksha Haqdawar and Khatauni Paimaish* so as to connect old khasra numbers with new khasra numbers pertaining to the land in dispute. Relying upon the decisions passed in case of title “Jatinder Singh and another Minor through Mother Vs. Mehar Singh and others” 2009 (1) RCR (Civil) 253. Learned counsel for the

appellants further submits that the matter needs to be remanded back to the first appellate Court as the evidence sought to be adduced in the appeal was very much relevant for the effective adjudication of lis and the non consideration of the application filed under Order 41 Rule 27 C.P.C., thus cause serious prejudice to the appellants/plaintiff.

7. On the other hand, counsel representing respondent No.4 who is the main contesting party having purchased a portion of the property in question and claiming himself to be a *bona fide* purchaser vehemently submits that in the facts of the present case, the appellants/plaintiffs cannot be permitted to take benefit of their own wrongs as they never pressed for decision upon their application before the first appellate Court, though, admittedly, notice of the same was duly served to respondent No.4 by the first appellate Court.

8. I have heard learned counsel for the parties and gone through the paper book as well as lower Courts record.

9. A perusal of record shows that the first appellate Court issued notice on the application filed under Order 41 Rule 27 CPC moved at the instance of plaintiffs upon respondent No.4 vide order dated 12.04.2013 and thereafter reply to the same was filed on 18.11.2013. Post that, the matter was adjourned for consideration on the application as well as for arguments on the appeal. Somehow, while deciding the first appeal vide judgment dated 27.11.2013, learned Additional District Judge, Amritsar, failed to take notice of the application filed under Order 41 Rule 27 CPC and resultantly, no order could be passed thereupon. On merits, again the first appellate Court non-suited the plaintiffs by recording non-production of *Khatuni Istemal, Naksha Haqdawar and Khatauni Paimaish* as one of the consideration against them.

10. A perusal of records shows that although the appellants have

been non-suited for want of proof of *Khatuni Istemal, Naksha Haqdawar and Khatauni Paimaish*, whereas no orders came to be passed on the application filed under Order 41 Rule 27 CPC moved at their instance vide which they sought permission to produce and prove on record the said documents. Thus, as is apparent, the documents sought to be proved on record by way of additional evidence are extremely relevant material having bearing on the issues involved in the case for determining the rights of the parties, the application filed at the instance of plaintiffs was required to be adjudicated upon by the first appellate Court while deciding the appeal.

11. In the absence of there being any decision made by the first appellate Court on the aforementioned application filed under Order 41 Rule 27 CPC, without going into the merits of the present appeal, the same is allowed. Judgment dated 27.11.2013 passed by the Additional District Judge, Amritsar, dismissing the first appeal filed at the instance of plaintiffs/appellants is hereby set aside and the matter is remanded back to the learned first appellate Court for its fresh adjudication along with the decision on the application dated 30.10.2013 filed under Order 41 Rule 27 CPC after issuing fresh notice to respondents No.1 and 2.

12. While arriving at the aforesaid conclusion, I find support from the judgment passed by the Hon'ble Supreme Court in case of Jatinder Singh (supra). Relevant para-4 thereof is reproduced hereunder as under:

“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 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.”

13. Parties represented herein and are directed to appear before the first appellate Court on 27.07.2023.
14. It would be appreciable if the aforesaid exercise be carried out preferably within a period of 6 months today.

(HARKESH MANUJA)
JUDGE

03.07.2023
anil

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