

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1242-2019 (O&M)

Date of Decision: March 04, 2024

Gurmail Kaur

...Petitioner

Versus

Yugbhir Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.G.S.Punia, Senior Advocate with
Ms.Harveen Kaur, Advocate
for the petitioner.

Mr.S.C.Lutava, Advocate
for respondent No.1.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 18.01.2019 (Annexure P-1), passed by learned lower Appellate Court, thereby, dismissing an application under Order 41 Rule 27 CPC, filed at the instance of the petitioner-defendant No.1 Gurmail Kaur.

The material facts, as culled out from the paperbook, are as follows:-

That, initially, respondent No.1-Yugbhir Singh (plaintiff) had filed a suit against Gurmail Kaur-petitioner and others, thereby, seeking joint possession to the extent of 1 Killa i.e. 8 Kanal of the land, as detailed in the headnote of the plaint and also sought relief of permanent injunction, to

restrain the defendant No.1-Gurmail Kaur, present petitioner, from getting the mutation of Dalip Singh, sanctioned in her favour alone.

Respondent No.1-plaintiff, asserted his right on the basis of the Will dated 07.12.2004, allegedly executed by Dalip Singh, in his sound disposing mind, in favour of plaintiff, Manwinder Singh and Gurmail Kaur. However, Gurmail Kaur had made appearance and filed written statement, thereby, asserting about cancellation deed dated on 29.11.2007, vis-a-vis, aforesaid Will, set up by the plaintiff. The said suit was finally decreed vide judgment dated 04.02.2016, the copy whereof is Annexure A-1.

Being aggrieved, the petitioner-defendant No.1, filed an appeal and further also, filed an application under Order 41 Rule 27 read with Section 151 CPC, for leading additional evidence, so as to, produce and exhibit the computerised copy of original death certificate of Balbir Singh s/o Balwant Singh and also wanted to examine Sub-Registrar/Tehsildar, Samrala, Ludhiana, who had attested the cancellation deed dated 29.11.2007.

However, during the pendency of the appeal, after hearing learned counsel for the parties, learned lower Appellate Court had dismissed the application vide impugned order dated 18.01.2019.

Feeling aggrieved by the aforesaid order, the petitioner-defendant No.1 Gurmail Kaur filed the present revision petition.

Learned counsel for the parties heard.

At the very outset, it is pertinent to mention that application under Order 41 Rule 27 CPC was decided by learned lower Appellate Court, without hearing counsel for the parties on the main appeal. In the given circumstances, during the course of arguments, learned counsel for

respondent No.1, stated at bar that he has no objection, if the revision petition is allowed and the case is remanded back with a direction to the Court below to consider the application for additional evidence, at the time of hearing of appeal on merits.

In view of the submission, so made, it is pertinent to mention that it is settled law that the Appellate Court should decide the application, at the stage of deciding the appeal, as that is the stage, where the Court can decide, whether there is any necessity to allow the application or not.

Beneficial reference is made to ***Municipal Committee, Ellenabad vs. Shanti Devi, 2003(1) RCR (Civil) 85***, wherein, reference was made to the decision rendered by the Hon'ble Supreme Court in case of ***State of Rajasthan vs. T.N. Sahani, 2001 (2) RCR (Civil) 419***, wherein, observations of the Hon'ble Supreme Court, interpreting the provisions of Order 41 Rule 27 CPC, were reproduced, which reads, as herein given:-

“It may be pointed out that this Court, as long back as in 1963 in K. Venkataramiah v. Seetharama Reddy, AIR 1963 Supreme Court 1526, pointed out the scope of unamended provision of Order 41 Rule 27(c) that though there might well be cases where even though the Court found that it was able to pronounce the judgment on the state of record as it was, and so, it could not require additional evidence to enable it to pronounce the judgment. It still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the Court to consider, at the time of hearing of the appeal on merits, whether the documents which are sought to be filed as additional evidence, need to be looked into to pronounce its judgment, in a more satisfactory manner. If that be so, it is always open to the Court to look into the

documents and for that purpose, amended provision of Order 41 Rule 27(b), Civil Procedure Code can be invoked. So the application under Order 41 Rule 27(b) should have been decided alongwith the appeal. Had the Court found the document necessary to pronounce the judgment in the appeal in a more satisfactory manner, it would have allowed the same, if not the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view, would be inappropriate..."

In the backdrop of the aforesaid observations, it was held that it is evident that Addl. District Judge has decided the application without deciding the appeal and therefore, the order cannot be sustained on this short ground alone. Thus, the petition was allowed and a direction was given to the trial Court to decide the application afresh along with the appeal, if such a necessity is felt by keeping in mind the observations made by the Hon'ble Supreme Court in *T.N.Sahani's case (supra)*.

Even, on similar parameters, in *Gurnam Singh vs. Saudagar Singh and others, 2005(2) RCR (Civil) 547*, while making reference to the aforesaid case law, with regard to the disposal of the application under Order 41 Rule 27 CPC, without hearing on the main appeal, learned Addl. District Judge was directed to pass fresh order, on the application, along with the appeal, as per law.

In the light of the aforesaid dictum and more particularly, considering the submissions made by learned counsel for respondent No.1, it is incumbent upon learned Appellate Court to consider the application for additional evidence along with the hearing of the appeal on merits.

Consequently, the revision petition is hereby accepted and the impugned

order is set aside. The parties through their counsel are directed to appear before learned Addl. District Judge/Successor Court on 20.03.2024 and the Court concerned, shall consider the application under Order 41 Rule 27 CPC along with the main appeal.

March 04, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No