



125

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

CR-2056-2023 (O&M)

Date of Decision : 10.12.2024

Shish Ram

... Petitioner(s)

Versus

Chandgiram & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.K. Yadav, Advocate for the petitioner.

Mr. Manish Mehta, Advocate for the respondents.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 09.02.2023 whereby the application filed by the defendant-respondent Nos.1 to 3 herein under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for additional evidence has partly been allowed.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for permanent injunction to the effect that he is the owner in possession as co-sharer of the land measuring 63 kanals 14 marlas comprised in Khewat No.163 Khatoni No.227 alongwith land measuring 7 kanals 8 marlas bearing Killa No.16//15 comprised in Khatoni No.228 total land being 7 kanals 2 marlas as per jamabandi for the year 2001-02. The suit was dismissed by the Trial Court vide the judgment and decree dated 31.08.2016. Aggrieved by the same, an appeal was preferred by the plaintiff-petitioner herein on 22.09.2016. During the pendency of the appeal, on 06.01.2020 an application was filed by the defendant-respondent

Nos.1 to 3 herein for leading additional evidence (Annexure P-1). Vide the said application the defendant-respondent Nos.1 to 3 had sought to bring on record the following documents :

- “a. Order dated 16.6.1963 passed by Consolidation Officer.*
- b. Amended allotment of land by Consolidation Authorities in pursuance of order dated 16.6.1963.*
- c. Site plan of the allotted area.*
- d. Jamabandi year 1991-92 of field No.27//11/2 showing the possession of plaintiff and his family on this alternatively allotted land to them after withdrawal of field No. 27//20/2 from them.*
- e. Complaint of civil suit No. 174 of 2010 (old CS No. 381 of 2010/12) titled Matadin etc. vs. Singh Ram etc.*
- f. Contempt petition with copies of statement of Ram Kumar, Siribhagwan and Rakesh.*
- g. Judgment and decree dated 30.9.2015 passed by Hon'ble CJ (JD) Mohindergharh in CS No. 174 of 2010.*
- h. Judgment and decree dated 10.12.2018 passed by Hon'ble ADJ Narnaul in case titled Matadin Vs. Singh Ram.”*

It was stated in the application that except for the judgment and decree dated 10.12.2018 which came into existence during the pendency of the appeal, the remaining documents could not be produced despite exercise of due diligence and for lack of proper legal advice. The First Appellate Court vide the impugned order dated 09.02.2023, without assigning any reasons, partly allowed the application. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner would contend that the application has been allowed vide the impugned order which is bereft of

any reasoning. The learned counsel has further contended that as per the law laid down in the judgment of the Hon'ble Supreme Court in the case of **Malayalam Plantations Ltd. Vs. State of Kerala & Anr. [2011 (3) RCR (Civil) 609]** if an application is filed under Order 41 Rule 27 CPC in a pending appeal, it is incumbent on the part of the Appellate Court to consider the same at the time of hearing it on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing on the issues involved. The learned counsel has further relied upon the observations of the Hon'ble Supreme Court in the case of **Malayalam Plantations Ltd.** (supra) which read as under :

“11) If any petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the part of the appellate Court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing in the issues involved. It is trite to observe that under Order 41, Rule 27, additional evidence could be adduced in one of the three situations, namely, (a) whether the trial Court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature. It is equally well-settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case.”

4. *Per contra*, the learned counsel for the defendant-respondent Nos.1 to 3 would contend that the application has only partly been allowed and that one of the documents sought to be produced on the record was the judgment and decree dated 10.12.2018 which came into existence during the pendency of the appeal. It is further the contention of the learned counsel that the evidentiary value of the documents would be seen at a later stage at the time of arguments and that the Court is not to delve into the relevancy or evidentiary value of the documents at this stage. The learned counsel has relied upon the judgment of this Court in the case of **Harpreet Kaur & Anr. Vs. Sawinder Kaur & Ors. [2018(4) PLR 549]** to contend that the application if adjudicated upon prior to the adjudication of the appeal, the same is to be challenged while challenging the decision in the appeal and not separately.

5. I have heard the learned counsel for the parties.

6. In the present case, strangely, the First Appellate Court has allowed the application under Order 41 Rule 27 CPC in a perfunctory manner. The impugned order dated 09.02.2023 is totally bereft of any reasoning as to why the application under Order 41 Rule 27 CPC has been allowed at the appellate stage.

7. Order 41 Rule 27 CPC reads as under:

“27. Production of additional evidence in Appellate Court - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission”

8. Hon’ble Supreme Court in the case of **Malayalam Plantations Ltd.** (supra) has held that it is incumbent on the part of the Appellate Court to consider the application at the time of hearing of the appeal on merits. It has further been held that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case.

9. Still further, in the case of **Union of India Vs. Ibrahim Uddin & Anr. [2012(4) RCR (Civil) 727]** the Hon’ble Supreme Court has held as under :

“Stage of Consideration :

38. An application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the

issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court. (Vide: Arjan Singh v. Kartar Singh & Ors., AIR 1951 SC 193; and Natha Singh & Ors. v. The Financial Commissioner, Taxation, Punjab & Ors., AIR 1976 SC 1053).

39. *In Parsotim Thakur & Ors. v. Lal Mohar Thakur & Ors., AIR 1931 PC 143, it was held:*

“The provisions of S.107 as elucidated by O.41, R.27 are clearly not intended to allow a litigant who has been unsuccessful in the lower Court to patch up the weak parts of his case and fill up omissions in the Court of appeal. Under R.27, Cl.(1) (b) it is only where the appellate Court “requires” it (i.e. finds it needful). The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but “when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent”, it may well be that the defect may be pointed out by a party, or that a party may move the Court to apply the defect, but the

requirement must be the requirement of the court upon its appreciation of evidence as it stands. Wherever the Court adopts this procedure it is bound by R. 27(2) to record its reasons for so doing, and under R.29 must specify the points to which the evidence is to be confined and record on its proceedings the points so specified. The power so conferred upon the Court by the Code ought to be very sparingly exercised and one requirement at least of any new evidence to be adduced should be that it should have a direct and important bearing on a main issue in the case...” (Emphasis added) (See also: Indirajit Pratab Sahi v. Amar Singh, AIR 1928 P.C. 128)

40. *In Arjan Singh v. Kartar Singh & Ors. (supra), this Court held:*

“.....If the additional evidence was allowed to be adduced contrary to the principles governing the reception of such evidence, it would be a case of improper exercise of discretion, and the additional evidence so brought on the record will have to be ignored and the case decided as if it was non-existent..... The order allowing the appellant to call the additional evidence is dated 17.8.1942. The appeal was heard on 24.4.1942. There was thus no examination of the evidence on the record and a decision reached that the evidence as it stood disclosed a lacuna which the court required to be filled up for pronouncing the judgment” (Emphasis added)

41. *Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the*

evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.

In the instant case, the application under Order XLI Rule 27 CPC was filed on 6.4.1998 and it was allowed on 28.4.1999 though the first appeal was heard and disposed of on 15.10.1999. In view of law referred to hereinabove, the order dated 28.4.1999 is just to be ignored.”

10. In the present case, the application is also bereft of any reasoning barring the reason that despite due diligence and due to lack of proper legal advice, the application could not be filed earlier. The First Appellate Court without giving any reasoning and without considering the above law laid down by the Hon’ble Supreme Court in the cases of **Malayalam Plantations Ltd.** (supra) and **Ibrahim Uddin** (supra), allowed the application by a non-speaking order.

11. The judgment in the case of **Harpreet Kaur** (supra) relied upon by the learned counsel for the defendant-respondent Nos.1 to 3 would not be of any help to him in view of the law laid down by the Hon’ble Supreme Court in the cases of **Malayalam Plantations Ltd.** (supra) and **Ibrahim Uddin** (supra) wherein it has clearly been laid down that an application

under Order 41 Rule 27 CPC for additional evidence is to be heard at the time of final hearing of the appeal. Accordingly, the impugned order cannot be sustained in law.

12. In view of the above and the law laid down by the Hon'ble Supreme Court, the present revision petition is allowed and the impugned order dated 09.02.2023 stands set aside. However, it shall be open to the First Appellate Court to consider the application for additional evidence at the time of the final decision of the appeal.

13. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

14. Pending applications, if any, also stand disposed off.

10.12.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO