

2024.PHHC.163028



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

206

**CR-2445-2019 (O&M)
Date of Decision: 05.12.2024**

RAVINDER KUMAR AND ANR

.... Petitioners

VERSUS

SAHAB SINGH AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Suman Jain, Advocate and
Mr. Rishabh Jain, Advocate for the petitioners.

Mr. D.S. Rawat, Advocate for respondents No.1 to 3 and 6 to 8.

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 27.03.2019 passed by the learned First Appellate Court whereby additional evidence was taken on record.

2. Brief facts may be noticed that the plaintiff-respondents herein filed a suit for possession by way of redemption. The said suit was dismissed vide judgment and decree dated 30.04.2014. Aggrieved by the same an appeal was preferred by the plaintiff-respondents. During the pendency of the appeal, an application for additional evidence was filed on 04.12.2015. Reply was filed to the said application. Vide order dated 23.08.2016 the application for additional evidence was allowed. The said order was challenged by the petitioners herein by filing civil revision petition being CR-6145-2016 which was disposed of vide order dated 23.01.2019 passed by this Court and the

order dated 23.08.2016 was set aside and the First Appellate Court was directed to decide the appeal along with the application for additional evidence. Thereafter, on 27.03.2019 the First Appellate Court de-exhibited the documents which had been led in evidence as additional evidence on the basis of the order dated 23.01.2019 passed by this Court in CR-6145-2016 (wrongly referred to as the order dated 24.08.2016 in the impugned order). The application for additional evidence qua examining the revenue officer was not pressed and accordingly to that extent the application was dismissed. However, vide the impugned order certain jamabandies, which the plaintiff-respondents claimed to have left out due to inadvertence and could not produce earlier, were taken on the record as additional evidence. It is apt to note that there was no fresh application for additional evidence and this order was passed on the earlier application dated 04.12.2015.

3. Learned counsel for the defendant-petitioners would contend that the earlier application dated 04.12.2015 was decided vide order dated 23.08.2016, which order was set aside vide order dated 23.01.2019 passed in CR-6145-2016 and it was directed by this Court that the application for additional evidence would be decided along with the main appeal. However, yet again vide the impugned order the application has partly been allowed and that too without even stating any reasons whatsoever for permitting the application for additional evidence.

4. *Per contra*, learned counsel for the plaintiff-respondents is not in a position to deny that there was categorical direction of this Court passed on

23.01.2019 in CR-6145-2016 that the application for additional evidence was to be decided along with the appeal.

5. Heard.

6. In the present case the application for additional evidence dated 04.12.2015 was allowed vide order dated 23.08.2016, which order was admittedly set aside by this Court vide order dated 23.01.2019 passed in CR-6145-2016 with a specific direction that the First Appellate Court would decide the application for additional evidence along with the main appeal. Now vide the impugned order dated 27.03.2019 the First Appellate Court yet again partially allowed the application for additional evidence during the pendency of the appeal and not while deciding the main appeal. The impugned order is in the teeth of the order dated 23.01.2019 passed by this Court in CR-6145-2016.

7. In view of the above, the present petition is allowed and the impugned order dated 27.03.2019 is set aside.

8. It is made clear that the application for additional evidence shall be considered by the successor First Appellate Court concerned at the time of deciding the main appeal.

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

05.12.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No