

RSA-2004 of 2018 (O&M)

2024:PHHC:075792



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

RSA-2004 of 2018 (O&M)

Date of decision: 27.05.2024

Harish Kumar

.....Appellant

Versus

Punjab State Forest Department Corporation Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Mayank Mathur, Advocate,
for the appellant.

Ms. Kanchan Sehgal, Advocate,
for the respondents.

NAMIT KUMAR, J.

1. This Regular Second Appeal has been filed by the appellant-plaintiff against the judgment and decree dated 31.03.2018, passed by the Court of learned Additional District Judge, Patiala, whereby appeal filed by the appellant-plaintiff against the judgment and decree dated 03.03.2014, passed by the Court of learned Civil Judge (Junior Division), Patiala, whereby his suit for declaration and permanent injunction was partly decreed, has been dismissed and the appeal filed by the respondents-defendants stands allowed.

2. Concisely, the facts of the present case are that appellant-plaintiff filed a suit for declaration to the effect that memo dated 20.09.2002 received by him on 25.09.2002, charge-sheet dated 15.12.2000, order dated 07.02.2002 regarding appointment of inquiry

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officer, order dated 29.10.2002 regarding dismissal of appellant-plaintiff from service and order dated 03.09.2012 regarding dismissal of his appeal are illegal, null and void and against the principles of natural justice and rules. Appellant-plaintiff further sought relief of restraining the respondents-defendants from imposing punishment upon him and effecting any recovery of Rs.10,22,415/- from the appellant-plaintiff.

3. The trial Court after appreciating the evidence on record and hearing the learned counsel for the parties, partly decreed the suit of the appellant-plaintiff vide judgment and decree dated 03.03.2014.

Relevant portion of the judgment of the trial Court reads as under: -

“Relief:

21. In view of the above discussion, the suit of the plaintiff is hereby partly decreed with costs to the effect that order No.90 dated 29.10.2002 is set aside to the extent of dismissal of plaintiff from service. It is made clear that defendants can proceed with the recovery of Rs.10,22,415/- as the said part of order is valid. Defendants are directed to reinstate the plaintiff and plaintiff is held entitled to all the rights, benefits and privileges, which he would had withdrawn/enjoyed had the order of dismissal not been passed. Defendants are further directed to comply with the judgment of this Court and reinstate the plaintiff and to give all the rights, benefits and privileges, within the period of 3 months, failing which plaintiff is held entitled to interest @ 10% per annum. Decree sheet be prepared accordingly. File be consigned to the record room.”

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4. Aggrieved against the judgment and decree of the trial Court, appellant-plaintiff as well as respondents-defendants filed separate appeals. Learned lower appellate Court vide judgment and decree dated 31.03.2018 accepted the appeal of the respondents-defendants and dismissed the appeal of the appellant-plaintiff as a result of which suit of the appellant-plaintiff was dismissed.

5. The only argument raised by the learned counsel for the appellant in the present case is that along with the appeal filed before the lower Appellate Court, an application was also filed under Order 41 Rule 27 of the CPC for producing additional evidence. Learned counsel for the appellant submits that the said application remained pending for adjudication and there is no order on the file of the lower Appellate Court which would show that the application filed under Order 41 Rule 27 of the CPC was decided prior to the decision of the appeal by the lower Appellate Court or along with the main appeal. Learned counsel for the appellant further submits that keeping in view the settled principle of law by the Hon'ble Supreme Court of India in ***Hakam Singh vs. State of Haryana and others, 2008(4) R.C.R.(Civil) 422***, any application filed for adducing additional evidence is to be decided prior to the decision of the suit or appeal concerned as the case may be and in the absence of deciding the said application, final order passed cannot be sustained. He also places reliance on the judgment of the Hon'ble Supreme Court in ***Sanjiv Goel v. Avtar S. Sandhu, 2006(9) SCC 748; Malayalam Plantations Ltd. v. State of Kerala and another, 2011 AIR (Supreme Court) 559*** and this Court in ***Ramesh***

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Kumar and another v. Bhagwan Dass Devki Nandan Dharamshala and another, 2011(17) R.C.R. (Civil) 595; Joginder Pal Monga and another v. Jasjit Singh, 2020(2) PLR 265; V.K. Goswami (now deceased) through his LRs v. Punjab Small Industries & Export Corporation Ltd., 2020(4) R.C.R.(Civil) 234; RSA-1904 of 2019 – Roshan Lal v. Raghbir Singh – decided on 19.04.2023; RSA-696 of 1994 – Babu (deceased) through LRs v. Lehmbhar Singh and others – decided on 18.05.2022 and RSA-310 of 2016 – Satbir Singh alias Sehdev (deceased) through his LR v. Raj Bala – decided on 17.05.2017.

6. Learned counsel for the respondents submits that undisputedly, the appellant filed an application under Order 41 Rule 27 of the CPC, which was not decided before passing the final order on the appeal preferred and also along with the appeal, however, it is not necessary to remand the case to the lower appellate Court as it will lead the parties to face further agony of years for final determination of their dispute. Learned counsel placed reliance upon the judgments of the Hon'ble Supreme Court in ***Ashwin Kumar K. Patel v. Upendra J. Patel and others, 1999(3) SCC 161; Mary Pushpam v. Telvi Curusumary and others, 2024(3) SCC 224.***

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. From the record, it transpires that the application filed under Order 41 Rule 27 of the CPC before the lower Appellate Court remained pending consideration even upto the date of final judgment

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and decree passed by the lower Appellate Court on 31.03.2018. That being so, the issue in question is covered by the judgment of the Hon'ble Supreme Court of India in ***Hakam Singh's case (supra)***. The relevant paragraph of which is reproduced hereinafter.

“4. Without going into the facts in detail, these appeals can be disposed of on a very short point. It is an admitted position that an application under Order 41 Rule 27 of the Code of Civil Procedure (In short "CODE") for acceptance of additional evidence was filed before the High Court in the aforesaid First Appeals, which were dismissed by the High Court by the impugned order. However, the application for acceptance of additional evidence under Order 41 Rule 27 of the Code was not considered by the High Court while disposing of the appeal.

5. That being the position, without going into the legality and propriety of the impugned order of the High Court passed in the aforesaid appeals, we set aside the same and remit back the cases to the High Court for decision of the Appeals afresh on merits and in accordance with law along with the application for acceptance of additional evidence under Order 41 Rule 27 of the Code.

6. Accordingly, the impugned order is set aside. The High Court is requested to dispose of the First Appeals in the light of the observations and directions made hereinabove within three months from the date of supply of a copy of this Order along with application for acceptance of additional evidence under Order 41 Rule 27 of the Code.”

9. Keeping in view the above, the judgment and decree of the

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lower Appellate Court dated 31.03.2018 is set aside and the case is remanded to the lower Appellate Court to decide the appeal afresh as well as the application filed under Order 41 Rule 27 of the CPC on merits and in accordance with law.

10. As the parties are litigating since long, it will be appreciated that the lower Appellate Court decides the appeal within a period of four months from the first appearance of the parties concerned. Parties are directed to appear before the lower Appellate Court on 10.07.2024. It is expected that the parties to the *lis* shall not be entitled to seek unwarranted adjournments.

11. The present Regular Second Appeal is disposed of in above terms.

12. Pending application(s), if any, stand disposed of accordingly.

27.05.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No