IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1775-1995 (O&M)
Reserved on :- 07.11.2025
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Bir Mati and another

… Appellants

Versus

Mehar Singh (Since Deceased) through his LR

... Respondent

****

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-
Mr. Surinder Gandhi, Advocate
for the appellants.

Mr. K.S. Malik, Advocate
for the respondent.

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VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal (here-in-after to be referred as "RSA") has been filed by the appellants/plaintiffs challenging the concurrent judgments and decrees rendered by the learned Sub-Judge IInd Class, Sonepat, and the learned Additional District Judge, Sonepat. The appellants contend that the findings of the learned Courts below suffer from errors of law and fact, stemming from a manifest misappreciation of evidence, resulting in substantial prejudice and miscarriage of justice, thereby warranting this Court's intervention under its appellate jurisdiction.

1.1. For clarity and convenience, the parties shall here-in-after be referred to as the plaintiffs and the defendant, corresponding to their respective statuses before the learned Trial Court. The salient and material

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facts forming the basis of the present proceedings, which are essential for the adjudication of the issues, are briefly outlined as follows:-

> *"The appellants/plaintiffs instituted a suit for declaration, praying that the decree dated 08.01.1990 be declared illegal, null-&-void, on the ground that it was fraudulently procured by the respondent/defendant through impersonation, as the appellants had neither appeared nor admitted the respondent's claim, thereby rendering the impugned decree void ab initio and warranting the institution of the present civil suit."*

3. Upon service of notice, the respondent/defendant entered appearance and asserted that the appellants/plaintiffs had duly appeared and admitted his claim, thereby rendering the decree dated 08.01.1990 and the consequent mutation valid. He further pleaded that the suit was not maintainable and stood barred by the plaintiffs' own acts and conduct; rest of the averments of the plaint were denied.

4. The appellants/plaintiffs filed a replication, specifically denying the averments contained in the written statement and reiterating the assertions made in the plaint. Upon due consideration of the pleadings and rival contentions, the Court framed the following issues for adjudication to ensure a focused and legally sound determination of the disputes between the parties:-

1. Whether the decree dated 08.01.1990 in suit No. 1401/89 is illegal, null & void? OPP.
2. Whether the mutation No. 3300 dated 13.3.1990 was wrongly sanctioned? OPP.
3. Whether the plaintiffs are entitled to the declaration prayed for ? OPP.

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4. Relief.

5. Both parties were granted sufficient opportunity to adduce evidence in support of their respective claims and defences. Upon conclusion of evidence and after hearing learned counsel at length, the learned Sub Judge IInd Class, Sonepat, dismissed the suit. Aggrieved by the judgement and decree, so passed by learned Trial Court, an appeal was preferred by the appellants/plaintiffs before the learned Additional District Judge, Sonepat. During the pendency of the aforesaid appeal, the appellants/plaintiffs moved an application for additional evidence, seeking comparison of their thumb impressions with those appearing on the '*power of attorney, written statement, and statements made in the Court'*. The learned Additional District Judge, Sonepat dismissed the said application as well as the appeal, thereby affirming the judgment and decree of the Trial Court.

6. The appellants have preferred the present appeal assailing the concurrent judgments and decrees rendered by the learned Courts below. Along with the appeal, an application for additional evidence seeking the same relief as prayed for before the learned Additional District Judge was also filed. The appeal was duly admitted to regular hearing, whereupon notice was issued to the sole respondent, who entered appearance and contested the proceedings. The complete record of the subordinate Courts was thereafter requisitioned to facilitate a comprehensive adjudication of the matter on merits.

7. I have heard learned counsel for the parties at length and given careful consideration to their submissions in light of the pleadings, evidence, and concurrent findings of the Courts below. The record has been meticulously examined to assess '*whether the impugned judgments and decrees, along with the application for additional evidence seeking*

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comparison of thumb impressions, suffer from any jurisdictional error, perversity, or legal infirmity warranting appellate interference'?

8. The appeal gives rise to the following "*quaestio juris substantialis*" for determination by this Court:-

i. **Whether the application seeking adducing of additional evidence was erroneously declined, and if such evidence is indispensable for the just and proper adjudication of the lis**?

9. Learned counsel for the appellants/plaintiffs contended that the learned First Appellate Court failed to appreciate the true import and object of Order 41 Rule 27 CPC, namely, to enable the appellate Court to admit additional evidence where such material is essential for rendering a just and complete adjudication of the controversy. Instead, the First Appellate Court declined to exercise its jurisdiction solely on the premise of alleged lack of diligence on the part of the appellants in producing the evidence at the trial stage. Counsel further submitted that both appellants-plaintiffs, while appearing in the witness-box, unequivocally deposed that they had neither appeared before the trial Court nor engaged any counsel, nor filed any written statement, nor made any admission in favour of the respondents/defendants. In such circumstances, the burden squarely rested upon the respondents/defendants to establish, by cogent evidence, that the appellants-plaintiffs had in fact appeared and admitted their claim.

10. Per contra, learned counsel for the respondent/defendant submitted that the application for additional evidence was rightly rejected, as the appellants failed to satisfy any of the statutory preconditions embodied in Order 41 Rule 27 CPC. He further argued that the learned Courts below had correctly placed the onus on the appellants/plaintiffs to establish, by affirmative and reliable evidence, their allegation that the decree in favour of

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the respondent/defendant was procured through impersonation and that no admission had, in fact, been made by them. In the absence of such proof, counsel contended, the appeal is devoid of merit and warrants dismissal.

11. The settled principle is that an Appellate Court, while considering an appeal, is ordinarily required to confine its adjudication to the pleadings and evidence that were placed before the Trial Court, and is not expected to traverse beyond the evidentiary record already constituted. Nonetheless, in appropriate and exceptional circumstances, the learned First Appellate Court is vested with the discretion to admit additional evidence, either *suo motu* or upon a party establishing sufficient justification for its reception. This enabling provision is embodied in Section 107 of the Code of Civil Procedure read with Order 41 Rule 27, which together delineate the contours and limitations of the appellate power to supplement the record. Section 107 CPC and Order 41 Rule 27 CPC are reproduced as under:-

> **107. Powers of Appellate Court**.—
>
> (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—
>
> (a) to determine a case finally;
>
> (b) to remand a case;
>
> (c) to frame issues and refer them for trial;
>
> (d) to take additional evidence or to require such evidence to be taken.
>
> (2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.
>
> **27. Production of additional evidence in Appellate Court**.

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(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 1. Ins. by Act 104 of 1976, s. 87 (w.e.f. 1-2-1977). 198 1[(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.

12. Clauses '*a*' and '*aa*' of Order 41 Rule 27 CPC narrowly delineate the circumstances in which a party may justifiably seek admission of additional evidence. The first contemplates situations where the learned Trial Court improperly refused to admit evidence that ought, in law, to have been received. The second applies where, despite the exercise of due diligence, the party was unable to produce the material at the trial either due to lack of knowledge or for reasons beyond its control. Clause (b) empowers the Appellate Court to admit additional evidence when such material is

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necessary to enable the Court to pronounce judgment or when its production is otherwise required for a substantial and just adjudication of the controversy.

12.1. In the present matter, the learned First Appellate Court declined the request for additional evidence, setting out its reasons in paragraph 11 of the impugned judgment, which reads as follows:-

> 11. "*The appellants have failed to satisfy any of the aforesaid four-conditions, for permitting additional evidence by the appellate court. It is not the case of the appellants that the trial court had not permitted them to lead the proposed evidence. It is also not their case that this evidence was not in their knowledge at that time or that the same could not be produced despite the exercise of due diligence. Thay have rather taken the stand that inadvertently they did not produce this evidence. This evidence is not required by this court to enable It to pronounce judgment and further I find no other substantial cause for permitting this evidence at this stage. The same will tantamount to re-opening of the whole trial. In* ***Shivjirao Nilangokar Petil Vs. Dr. Mahesh Madhav Gosavi and other AIR 1987 5. C. 294****, there was no explanation that the evidence sought to be adduced was not available earlier. In this background the Supreme Court declined the permission to lead additional evidence. Hence I reject this application for permission to lead additional evidence and proceed further to decide the appeal on merits on the basis of evidence adduced by both the parties before the trial court.*"

13. The appellants–plaintiffs maintain that they never appeared in Civil Suit No. 1401 of 1989 (Mehar Singh v. Beer Mati & Others), nor did

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they file any written statement or make any statement conceding the claim of the respondent–defendant. They are illiterate women who authenticate documents only by affixing thumb impressions. In such circumstances, a forensic comparison of their admitted thumb impressions with the impressions appearing on the record of the earlier civil suit would have constituted the most precise and scientifically determinative method of ascertaining whether impersonation had occurred.

13.1. Given that fingerprint science is universally recognized as an exact and infallible identifier, the proposed additional evidence though not tendered at the initial stage was indispensable for reaching a just, accurate, and conclusive adjudication of the allegation that the earlier decree was vitiated by fraud for not. The omission to examine fingerprint expert during trial, even if attributable to the appellants, did not foreclose the appellate court's statutory discretion under Order 41 Rule 27 CPC to admit such material where its consideration is necessary for doing complete justice and for preventing the perpetuation of a possible fraud on the court.

13.2. A direction for comparison of the disputed thumb impressions with the standard impressions before a competent forensic authority (such as FSL, Madhuban) would have enabled the appellate court to decisively determine whether the impugned decree rested upon genuine participation or fraudulent impersonation. The refusal of the first appellate court to exercise this jurisdiction, despite the clear relevance and probative indispensability of the proposed material, has therefore defeated the very objective underlying Order 41 Rule 27 CPC, as repeatedly underscored by the Hon'ble Supreme Court, including in **Sanjay Kumar Singh v. State of Jharkhand (2022) 7 SCC 247**, the Hon'ble Apex Court has held as under:-

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"5. The High Court has rejected the said application by observing that the application does not satisfy the requirement of Order 41 Rule 27 read with Section 96 CPC. The High Court has also observed that the appellant has failed to establish that notwithstanding exercise of due diligence, such additional evidence was not within his knowledge and could not after exercise of due diligence be produced before the Courts below.

6. However, the High Court while considering the application for additional evidence has not appreciated the fact that the documents which were sought to be produced as additional evidence might have a bearing on determination of the fair market value of the acquired land. It is to be noted that except the sale deed dated 29.12.1987, which was rejected by the Courts below, no further evidence was on record to determine the fair market value of the acquired land. It was a case of awarding of fair compensation to the landowner whose land has been acquired for public purpose. It cannot be disputed that the claimant whose land is acquired is entitled to the fair market value of his land.

7. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of

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the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature.

8. As observed and held by this Court in the case of **A. Andisamy Chettiar v. A. Subburaj Chettiar (2015) 17 SCC 713** , 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. It is further observed that 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."

14. In the present matter, the additional evidence sought to be adduced namely, a forensic comparison of the thumb impressions appearing on the record of Civil Suit No. 1401/1989 with the admitted thumb impressions of the appellants would unquestionably have dispelled the cloud of doubt surrounding the authenticity of the earlier proceedings. Such expert opinion constitutes the most direct and scientifically reliable means of determining whether the appellants had genuinely appeared and admitted the respondent's claim, or whether imposters had been substituted to procure a fraudulent decree. The proposed evidence, therefore, went to the very root of the controversy and was indispensable for enabling the court to arrive at a definitive and just conclusion.

14.1. However, an additional impediment has since emerged. The old judicial records are presently undergoing digitization. As per the

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communication dated 08.10.2025 issued by the Deputy Commissioner, Sonepat (Letter No. 467), approximately 60% of the district record has been scanned, while the remaining 40% remains unorganized, scattered, and in deteriorated condition. The record of Civil Suit No. 1401/1989 critical for conducting the fingerprint comparison has not been traceable. In such circumstances, even if the application for additional evidence were to be allowed or the matter remanded, no meaningful purpose would be served, as the primary record necessary for expert opinion is unavailable. The appeal must, therefore, be determined strictly on the basis of the material presently on the record.

14.2. Here, the only evidence adduced by the appellants–plaintiffs consists of their oral assertions that they did not appear in the earlier suit, did not file any written statement, and did not admit the respondent's claim. Section 114(e) of the Indian Evidence Act raises a statutory presumption that judicial acts and court proceedings are regularly conducted in accordance with law. When a party alleges deviation from such regularity such as the appellants' plea that imposters were produced before the Court it assumes a heavy evidentiary burden. That burden could only have been discharged through cogent and conclusive evidence, including a scientific comparison of thumb impressions.

14.3. The learned First Appellate Court, therefore, correctly held that court proceedings are inherently sacrosanct and cannot be lightly impeached on vague or unsubstantiated allegations. The appellants failed to produce convincing evidence to establish that the consent decree in the prior suit was procured through fraud or impersonation. In the absence of such proof, and given the untraceability of the relevant record, this Court finds no basis to interfere.

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14.4. No other substantial question of law arises for consideration. The appeal, being devoid of merit, stands dismissed.

15. Consequent upon the final adjudication of the main appeal, all pending miscellaneous application(s), if any, stand disposed of in view of the judgment rendered herein. No further orders are required.

(VIRINDER AGGARWAL)
JUDGE

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Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No

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