



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

(210)

RSA No. 1852 of 1996 (O&M)**Date of Decision: 11.12.2025**

Ramji Dass (Since Deceased) Through LRs & another

...Appellants

Versus

Tara Chand (Since Deceased) Through LRs & others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Ram Lal Gupta, Advocate,
for the appellants.

None for the respondents

VIRINDER AGGARWAL, J.(ORAL)

1. The present appeal is directed against the judgment and decree dated 03.04.1996 passed by the learned Additional District Judge, Faridkot, whereby the appeal filed by the present appellants was dismissed and the judgment and decree dated 18.10.1993 rendered by the learned Senior Sub Judge, Faridkot, was affirmed.

2. The plaintiffs-respondents filed a suit for possession by way of partition, asserting that the suit properties, comprising a residential house at Kotkapura, a house and a shop at village Sandhwan, and a plot, were joint Hindu family properties, jointly owned by them and defendant No.1-appellant No.1. The defence of appellant No.1 (Ramji Dass) was that some properties were exclusively owned by him on the basis of a will dated 15.05.1983 allegedly executed by Naurang Lal, and certain properties were exclusively owned by him and appellant No.2 on account of independent title and adverse possession.



3. The learned Trial Court decreed the suit to the extent of holding that the plaintiffs and defendant No.1 were joint owners in equal shares in respect of the properties mentioned in clauses (i), (ii) and (iii) of the plaint headnote, while dismissing the suit regarding the property at clause (iv). Subsequently, the appellants preferred an appeal before the learned First Appellate Court, which, however, dismissed the appeal and affirmed the findings recorded by the learned Trial Court.

4. During the pendency of the first appeal, the appellants filed an application under Order XLI Rule 27 read with Section 151 CPC, seeking permission to lead additional evidence. The learned First Appellate Court, however, did not advert to the said application or make any reference to it in the impugned judgment.

5. Learned Counsel for the appellants has submitted that the non-adjudication of the application under Order XLI Rule 27 CPC vitiates the appellate judgment and necessitates remand, as the Appellate Court is under a statutory duty to apply its mind and record its decision on such application.

6. It is well-settled that an application under Order XLI Rule 27 CPC is required to be expressly adjudicated by the Appellate Court. The Court must record reasons whether the additional evidence is necessary for deciding the appeal, or whether the case falls within the parameters of clauses (a), (aa) or (b) of Rule 27. The Hon'ble Supreme Court in *Jatinder Singh v. Mehar Singh*, 2009 (17) SCC 465, *Malayalam Plantations Ltd. v. State of Kerala*, 2010 (4) SCC (Civil) 951 and this Court in *Daviinder Singh v. Sarita Arora* 2024(3) PLR 127, and *Vikas Tusher v. Virender Kumar Bansal* 2014(62) RCR(Civil) 521 have consistently held that where the appellate court fails to decide an



application under Order XLI Rule 27 CPC, the judgment is rendered procedurally defective.

7. In the present case, the record reflects that the application was duly taken on file, notice was issued vide interim order dated 14.06.1993, and the respondents submitted their reply pursuant to the interim order dated 07.08.1993. However, the learned First Appellate Court omitted to deal with or decide the said application either in the main judgment or by passing any separate order on the same date. Such non-consideration of a pending application amounts to a material irregularity in the exercise of appellate jurisdiction and necessitates interference by this Court.

8. Accordingly, in view of the above said facts and the law laid down in above said authorities, the judgment and decree dated 03.04.1996 passed by the learned Additional District Judge, Faridkot, cannot be sustained and is hereby set aside. Hence, the present appeal is partly allowed and the matter is remanded to the learned First Appellate Court to decide the appeal afresh, strictly in accordance with law, after Considering and deciding the appellants' application under Order XLI Rule 27 CPC and recording findings either within the main judgment or by a separate order.

9. Both parties shall appear before the learned First Appellate Court on 15.01.2026 or on any date fixed by that Court. The learned First Appellate Court is requested to decide the appeal expeditiously, preferably within four months from the first date of appearance.

10. It is clarified that this Court has not expressed any opinion on the merits of the appeal or on the merits of the application under Order XLI Rule 27 CPC.

All questions are left open.



11. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

11.12.2025
Saurav Pathania

(VIRINDER AGGARWAL)
JUDGE

<i>Whether reasoned / speaking?</i>	<i>Yes / No</i>
<i>Whether reportable?</i>	<i>Yes / No</i>