

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

Civil Revision No. 2261 of 2011

Rajender Kumar son of Kallu Ram son of Roshan
Lal, R/o Mohalla Kharkhari, Tehsil Narnaul,
District Mahendergarh.

.....Petitioner

Versus

1. Suresh Chand adopted son of Sh. Phool
Chand son of Sh. Ram Chander, Vaishya, R/o
Mohalla Khadkhadi, Narnaul.

.....Plaintiff/Respondent

2. Jagdish Parshad son of Late Kallu Ram,
3. Smt. Raghadevi,
4 Smt. Jeevitri Devi
Both Ds/o Sh. Kulu Ram son of Sh. Roshan
Lal, Vaishya Aggarwal,
All Rs/o Mohalla Khadkhadi, Narnaul,
District Mahendergarh, L.R.s of deceased
Kallu Ram (defendant no.1).
5 Chetan Parkash (son)
6. Geeta Devi (daughter),

7. Smt. Chhapa Devi widow Puran Chand son of Sh. Roshan Lal, caste Vaishya Aggarwal, All Rs/o Mohalla Khadkhadi, Narnaul.

.....Proforma Respondents

Civil Revision petition under Article 227 of the Constitution of India for setting aside the impugned order dated 18.3.2011 passed by ld. District Judge Narnaul, vide which the applications filed by the plaintiff/appellant under Order 41 Rule 27 CPC were allowed at appellate stage.

AND/OR

Any other appropriate order or relief which this Hon'ble Court may deems fit in the peculiar facts and circumstances of the present case, may kindly be passed in favour of the petitioners.

RESPECTFULLY SHOWETH:-

1. That the petitioner is permanent resident of District Mahendergarh in the State of

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.2261 of 2011 (O&M)
Date of decision: 14.08.2013

Rajender Kumar son of Kallu Ram son of Roshan Lal, resident of
Mohalla Kharkhari, Tehsil Narnaul, District Mahendergarh.
...Petitioner.

versus

Suresh Chand adopted son of Shri Phool Chand son of Shri Ram
Chander, Vaishya, resident of Mohalla Khadkhadi, Narnaul, and
others.
...Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sandeep Kumar Yadav, Advocate,
for the petitioner.

Ms. Priya Gupta, Advocate,
for Mr. P.K. Gupta, Advocate,
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment? **Yes.**
2. To be referred to the reporters or not? **Yes.**
3. Whether the judgment should be reported in the digest? **Yes.**

K.Kannan, J. (Oral)

1. The revision is against the order passed by the appellate Court admitting an application filed under Order 41 Rule 27 CPC to produce additional evidence in appeal. The appeal is still said to be pending. The Court, while allowing the application, has observed that the respondent had also filed an application to receive additional

evidence and if that was to be allowed, the application filed by the petitioner bringing some old documents purporting to prove the jointness of ownership in relation to the property by the predecessors will be relevant and will have to be admitted. I do not think, any prejudice will be caused by the production of these records considering the fact that the present petitioner's application for reception of additional evidence purports to show the property to belong to their common ancestor, which the transaction of sale by the appellants during the pendency of appeal disposing of a portion of the property as though it belongs to them absolutely, brought as additional evidence by the respondents, will itself be answer to the contentions raised by the appellant through the additional documents. I do not, therefore, think that there is any scope for intervention.

2. Before parting, I must observe that it is irregular procedure for an appellate Court to deal with application under Order 41 Rule 27 CPC independently and dispose it of before the appeal is disposed of. Order 41 Rule 27 CPC reads as follows:-

“27. Production of additional evidence in 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) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

The above provision contemplates three situations: (i) the Court against whose judgment the appeal has filed has not wrongly admitted a document; (ii) where the party producing the document did not file the document or could not file additional evidence before the court below, notwithstanding the exercise of due diligence etc.; (iii) the appellate Court requires a document to be produced or witnesses to be examined, in order to enable the court to pronounce

the judgment, or any other substantial cause. All these situations will be examined by the Court only at the time when it pronounces the judgment. In State of Rajasthan Versus T. Sahani-2001(10) SCC 619, the Supreme Court reminded that if additional evidence was produced at the appellate stage, it was entirely for Court to consider at the time of hearing of appeal on merits to ensure whether the documents sought to be filed needed to be looked to pronounce its judgment in more satisfactory manner. The relevance of the document or additional evidence shall be such as that the court finds that it will have an important bearing to the ultimate decision to be reached by the Court. This evidence cannot be taken up at a preliminary hearing and leave the hearing of the appeal on merits be taken at a subsequent hearing. It must be done simultaneously. The proper procedure therefore shall be, the application must be taken up along with the appeal and if it finds that a party had a good reason to produce additional evidence for any of the reasons available under Order 41 Rule 27 CPC, the Court has again two options: (i) to allow the additional evidence to be brought and if it refers to any document, consider the same if it did not require any further proof. (ii) If, on the other hand, the document cannot be received without further proof and the reception of the document will have a bearing to the ultimate decision of the Court different from the manner in which it was decided by the court below, the judgment of the court

below shall be set aside and remanded for consideration in the light of the document brought before the appellate Court for evidence. It is also possible for the appellate Court to allow for proof of the additional evidence if it so thinks fit. Admitting the document in evidence even before the disposal of appeal is therefore, a wholly improper procedure. Since it has already been done and I have found circumstances exist for exercise of discretion under Order 41 Rule 27 CPC, I do not propose to modify the same and this has to be seen only for future course of action by the appellate Courts.

3. The revision petition is dismissed.

sf (K.KANNAN)
JUDGE

14.08.2013
sanjeev

Note: (Not to be printed.) The copy of the judgment shall be circulated by the Registry to all the subordinate Courts for strict observance of the procedure to be followed in disposing of application under Order 41 Rule 27 CPC.

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14.08.2013
sanjeev

Sd/- (K.KANNAN)
JUDGE



*BEA added
May 12/13
N
29/8
Sd/-
sanjeev
30/8/13*

*Manisha Azeed
30/08/13*