



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

RSA-2198-1992

Date of Decision: 06.03.2025

Kulwant Singh

...Appellant

Versus

Sajjan Singh (Deceased) Through LRs

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Balbir Singh Sewak, Advocate
for the appellant.

Mr. Amrik Singh, Advocate
for respondents No.1 (i) and 1 (ii).

None for respondent No.1 (iii) to 1 (vi).

VIKRAM AGGARWAL, J (ORAL).

This is plaintiff's appeal against the judgment and decree dated 27.08.1992 passed by the Court of learned Additional District Judge, Ropar dismissing the appeal filed by the plaintiff against the judgment and decree dated 16.12.1988 passed by the Court of learned Senior Sub-Judge, Rupnagar vide which the suit for recovery filed by the plaintiff was dismissed.

2. At the outset, learned counsel for the appellant submits that an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (for short 'CPC') had been moved by the appellant/plaintiff before the Court of learned Additional District Judge, Ropar for additional evidence but the same was not decided while deciding the appeal on 27.08.1992. Learned counsel submits that under the circumstances, the matter deserves to be remitted to the Court of learned Additional District Judge, Ropar for decision of the same. In support of his contentions, he places reliance upon the judgment passed by the Supreme Court of India in the case of '*Malayalam Plantations Ltd. Vs. State*

of Kerala and Another', (2011) AIR (SC) 559 as also the judgments passed by this Court in the cases of '*Vikas Tushe Vs. Virender Kumar Bansal and Another*', 2014 (62) RCR (Civil) 521, '*Joginder Pal Monga and Another Vs. Jasjit Singh*', 2020 (2) PLR 265 and '*V.K. Goswami (Now Deceased) Through His LRs. Vs. Punjab Small Industries and Export Corporation Ltd.*', 2020 (4) RCR (Civil) 234.

3. On the other hand, learned counsel representing respondents No. 1 (i) and 1 (ii) submits that there is no merit in the application for additional evidence and, therefore, the same could not have been allowed by the First Appellate Court. However, learned counsel could not deny the fact that the application remained undecided.

4. I have considered the submissions made by learned counsel for the parties and have perused the record.

5. The record shows that an application under Order 41 Rule 17 CPC was duly moved before the Court of learned Additional District Judge, Ropar on 08.05.1991. The matter was adjourned to 12.06.1991 for filing of reply to the said application and for arguments. However, on 12.06.1991, no reply was filed and the matter could not be taken up as the Court was engaged in a Sessions trial. Orders dated 08.05.1991 and 12.06.1991 state as under:

“ Order dated 08.05.1991-

Counsel for appellant has filed an application under Order 41 Rule 27 CPC. Notice given to other side. To come up for reply and arguments on 12.06.1991.

Order dated 12.06.1991-

Due to sessions trial and other work fixed for today, this appeal was listed for adjournment. As such, this appeal is posted for 14.08.1991 for arguments.

6. Thereafter, the matter was taken up on few dates but it appears that neither the reply to the application was filed nor any arguments were

addressed on the said application and ultimately, the appeal was decided on 27.08.1992.

7. It is trite law that an application under Order 41 Rule 27 CPC for leading additional evidence has to be decided alongwith the main appeal. In case, the Court, after considering the application, finds it to be devoid of merit, the Court can proceed to decide the appeal. However, if it finds that there is merit in the application, the same can be allowed and the matter can be fixed for leading additional evidence whereafter arguments in the main appeal have to be heard.

8. In the case of '*Malayalam Plantations Ltd. Vs. State of Kerala and Another*' (supra), the Supreme Court of India, while relying upon other judgments passed by the Supreme Court of India previously, held that where an application under Order 41 Rule 27 CPC is filed in an appeal, it would be incumbent on the part of the Appellate Court to consider the same at the time of hearing the appeal on merits. The Supreme Court of India accordingly remitted the matter with a direction to decide the application under Order 41 Rule 27 CPC in accordance with law:

“10. In view of the above provision, in our opinion, when an application for reception of additional evidence under Order 41 Rule 27 of Civil Procedure Code was filed by the parties, it was the duty of the High Court to deal with the same on merits. The above principle has been reiterated by this Court in *Jatinder Singh & Anr. v. Mehar Singh & Ors.*, 2009(1) RCR (Civil) 253: 2008(6) R.A.J. 545 and *Shyam Gopal Bindal and Others v. Land Acquisition Officer and Another*, 2010(2) RCR (Civil) 845: 2010(3) R.A.J. 145 : (2010)2 SCC 316.

11. If any petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the part of the appellate Court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing in the issues involved. It is trite to observe that under Order 41, Rule 27, additional evidence could be adduced in one of the three situations,

namely, (a) whether the trial Court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature. It is equally well-settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case.”

9. A similar view was taken by a Co-ordinate Bench of this Court in the case of ‘*Vikas Tushe Vs. Virender Kumar Bansal and Another*’ (supra) and ‘*Joginder Pal Monga and Another Vs. Jasjit Singh*’ (supra). Reliance in these judgments were also placed upon the judgment of the Supreme Court of India in the case of ‘*Malayalam Plantations Ltd. Vs. State of Kerala and Another*’ (supra).

10. In view of the ratio laid down in the aforesaid judgments, the judgment and decree dated 27.08.1992 passed by the Court of learned Additional District Judge, Ropar is not sustainable. Accordingly, the same is set aside and the matter is remitted to the Court of learned Additional District Judge, Ropar to proceed in accordance with law keeping in view the settled position of law as has been stated in the preceding paragraphs.

11. Keeping in the view that the matter pertains to the year 1992, a direction is issued to the Court of learned Additional District Judge, Ropar to hear and decide the matter finally (including the application under Order 41 Rule 27 CPC) within a period of 06 months from today.

The appeal is accordingly ***disposed of*** in the above terms.

(VIKRAM AGGARWAL)
JUDGE

06.03.2025

Prince Chawla

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No