



RSA-2787-2017 (O&amp;M)

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

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RSA-2787-2017 (O&amp;M)

Date of Decision: 09.01.2025

**RAM LUBHAYA & ANR****... Appellants****V/S****RAMESH KUMAR @ KUKI & ORS****.... Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. Aashish Paul, Advocate for  
Mr. Anil Kumar Garg, Advocate for the appellants.

Mr. R.S. Dadwal, Advocate  
for respondents No.1, 2 (a, b & d), 3.

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**SUVIR SEHGAL, J. (ORAL)**

1. Defendants-appellants are in second appeal before this Court challenging the concurrent finding recorded by the courts below.
2. Plaintiffs-respondents filed a suit for decree of declaration to the effect that they are co-owners in House No.19, Street No.14, Basti Tankanwali, Ferozepur City with a consequential relief for permanent injunction restraining the defendants from alienating the suit property.
3. Upon being served, defendants contested the suit by filing separate written statements. After trial, suit was accepted by judgment and decree dated 06.01.2015. Plaintiffs and defendant No.1 were held to be co-owners in the suit property to the extent of 1/6th share each and defendants No.2 to 4 were found to be co-owners therein to the extent of



1/6th share jointly being the widow and sons of deceased Madan Lal. Defendants were restrained from alienating the suit property beyond their share. Defendants filed an appeal before the first appellate court, which was dismissed by judgment dated 28.10.2016 passed by the learned Additional District Judge, Ferozpur.

4. Counsel for the appellants has argued that late Bihari Lal, father of defendants No.1 to 4 had executed a Will dated 05.06.1981 in their favour and the suit property which was self acquired of the deceased, was bequeathed in their favour. He submits that the parties could not lead any evidence regarding the Will before the trial Court and moved an application for leading additional evidence along with the memorandum of appeal. He asserts that even though the application was being contested by the plaintiffs by filing a response, yet the application remained undecided. He requests that the matter be remanded for the adjudication of the application. Counsel representing the respondents while supporting the judgments and decrees passed by the courts below, could not dispute the assertion made by counsel for the appellants.

5. I have heard counsel for the parties and considered their respective submissions as well as examined the requisitioned record.

6. Perusal of the record of the first appellate court shows that along with the appeal, three applications were moved including an application for stay of operation of the impugned decree. Application filed under Order 22 Rule 10 CPC was accepted vide order dated 11.05.2015. However, there is no reference in any of the orders passed by the first appellate court to the application for production of evidence



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moved by the appellants. It is therefore, evident that this application remained pending.

7. While deciding the appeal, the first appellate court had failed to take notice of the miscellaneous application and to decide whether additional evidence could be permitted to be produced. The first appellate court ought to have passed an order in respect of the application, either allowing it or rejecting it. Reliance is placed upon judgments of the Supreme Court in *M/s Eastern Equipment and Sales Ltd. Versus ING. Yash Kumar Khanna (2008) 12 SCC 739; Sanjiv Goel Vs. Avtar S. Sandhu (2006) 9 SCC 748; and Namdeo Versus Tukaram, 2008 (69) AIC 18.* It was the duty of the Court to take a decision on the application, on merits, however, this has not been done. As the application has not been dealt with, it cannot be deemed to have been dismissed. Non-consideration of application has lead to miscarriage of justice. In such a situation, this Court has no alternative but to set aside the judgment passed by the first appellate court and remit the appeal for decision afresh along with the application for permission to produce additional evidence.

8. For the foregoing reasons, impugned judgment dated 28.10.2016 passed by the first appellate court is set aside and the appeal is remitted to it for decision afresh on merits, in accordance with law.

9. It is made clear that this Court has not gone into the merits of the appeal or application for adducing of evidence filed under Section 151 CPC.

10. Appeal is disposed of.

11. Parties are directed to appear before the learned District



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Judge, Ferozepur, on 10.03.2025 at 10:00 a.m. who may adjudicate the appeal himself or assign it to any Court of competent jurisdiction.

12. Pending application, if any, is also disposed of.

09.01.2025  
pooja saini

**(SUVIR SEHGAL)**  
**JUDGE**

<i>Whether Speaking/Reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>