

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

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CR-2593-2025 (O&M)**Date of Decision: April 30, 2025****Gajraj and others****.... Petitioners****Versus****Dharambir Singh and others****.... Respondents****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: - Mr.Rakesh Kumar Sharma, Advocate

for the petitioners.

NIDHI GUPTA, J. (ORAL)

1. The present revision petition has been filed by defendants No. 1, 2, 7(iv), 8(ii) & 22 under Article 227 of the Constitution of India for setting aside order dated 26.03.2025 (Annexure P-7) passed by learned Additional District Judge, Palwal whereby application filed by the plaintiff/respondent Nos. 1 to 3 herein, under Order 41 Rule 27 read with Section 151 CPC for additional evidence, has been allowed.
2. Learned counsel for the petitioner submits that the Civil Suit dated 02.07.2013 (Annexure P-1) was filed by the plaintiffs for declaration and possession; which was dismissed by the learned trial court vide judgment and decree dated 12.12.2017 (Annexure P-3).
3. Aggrieved thereof the plaintiffs had filed Civil appeal No.5 dated 02.01.2018 (Annexure P-4) before the learned Additional Sessions Judge, Palwal. During the pendency of the said appeal the plaintiffs had moved an application dated 19.07.2023 (Annexure P-5) under Order 41 Rule 27 CPC for additional evidence. The contesting defendants had filed their reply dated



14.12.2023 (Annexure P-6) to the said application. However, vide the impugned order dated 26.03.2025 (Annexure P-7) the said application of the plaintiffs has been allowed.

4. Learned counsel for the petitioners submits that as per the provisions of Order 41 Rule 27 CPC, the application for additional evidence before the Appellate Court cannot be allowed except in the three situations envisaged in Rule 27. It is submitted that in the present case none of the three eventualities are satisfied. It is argued that provision of Order 41 Rule 27 CPC has not been engrafted to enable parties to patch up the weak points in the case and to fill up legal submissions in the Court of Appeal or to fill any lacunae or gaps in the evidence led by them before the trial court. Moreover, it is necessary for the Appellate Court to record whether the Appellate Court is able to pronounce the judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.
5. It is submitted that even the bona fides of the plaintiffs is not clear as, along with the appeal on 02.01.2018 (Annexure P-9), the plaintiffs had also filed an application for amendment of plaint; which was subsequently withdrawn by them vide order dated application 19.02.2025 (Annexure P-9) i.e. after almost 7 years. Accordingly, it is prayed that the impugned order be set aside.
6. No other argument has been raised by learned counsel for the petitioner.
7. I have heard learned counsel for the petitioner and perused the case file in great detail.
8. A perusal of the application filed dated 19.07.2023 (Annexure P-5) by the plaintiffs under Order 41 Rule 21 CPC shows that the additional evidence sought to be adduced by the plaintiffs included the following documents: -



“That at the time of leading evidence before the Ld. Lower Court some valuable documents were not available to the appellants/plaintiffs. Now the appellants/plaintiffs want to submit the following documents:-

i) Certified copies of Jamabandi for the year 1955-56, 1957-58, 1945-46, 1940-41, 1938-39, 1930-31, 1928-29, 1922-23, 1918-19, 1914-15, 1910-11, 1907-08, 1903-04, 1902-03, 1898-99, 1894-95, 1890-91, 1886-87.

ii) Jamabandi Urdu version for the year of 1945-46, 1940-43, 1938-39, 1930-31, 1926-27, 1922-23, 1918-19, 1914-15, 1910-11, 1907-08, 1903-04, 1902-03, 1898-99, 1894-95, 1890-91, 1886-87.

iii) Certified Copies of Jamabandi for the year of 2020-21, 2005-06, 2000-2001, 1995-96, 1990-91, 1985-86, 1980-81, 1975-76, 1970-71, 1965-66, 1961-62 and Urdu version of 1900-04.

9. A bare perusal of the above documents reveals that the same pertain to very old revenue record, some almost 150 years ago. Needless to say, it would be well nigh impossible for the plaintiff to procure the said revenue record. Order 41 Rule 27 of CPC is reproduced as under:-

“Order 41.....

27. Production of additional evidence 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

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(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

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.”

10. It is the view of this Court that the case of the respondents falls within the scope of Rule 27(1)(aa) and (b). It is even so recorded in Para 7 of the impugned order dated 26.03.2025, which reads as follows:-

*“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 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 pronounce judgment or for any other substantial cause of like nature. In **A. Andisamy Chettiar v. A. Subburaj Chettiar**, reported in **(2015) 17 SCC 713**, it was held by the Hon’ble Apex Court 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.”

11. In view of the above, no ground is made out to interfere in the impugned order. The instant revision petition is **dismissed**.

12. Pending application(s), if any, shall also stand disposed of.

April 30, 2025

(NIDHI GUPTA)

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JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No