



CR-6662-2025

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

CR-6662-2025

Date of Decision: 19.09.2025

HARI PARKASH MANGLA

....Petitioner

Versus

M/S NAWAL AND SHARMA MEDICAL CARE PVT. LTD.

...Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Santosh Sharma, Advocate
for the petitioner.

Mr. Pankaj Nanhera, Advocate and
Mr. Rahul Gautam, Advocate
for the respondent.

Parmod Goyal, J. (Oral)

Present petition has been preferred by plaintiff/petitioner being aggrieved by order dated 09.09.2025 (Annexure P-1), passed by learned Additional District Judge, Sonipat, vide which the application for additional evidence moved by the appellant/defendant was allowed. Learned counsel for the petitioner-plaintiff has challenged the impugned order dated 09.09.2025, on two grounds. Firstly, that learned First Appellate Court has erred in deciding the application without deciding the main case. It is asserted that learned First Appellate Court had only heard the application and decided the same and, therefore, impugned order is liable to be set aside. Second ground taken to challenge the impugned order is on merits. It is asserted on behalf of petitioner that learned First Appellate Court has erred in not considering the fact that sale deeds was sought to be adduced in evidence were duly mentioned by respondent/defendant in his written



statement and, therefore, at this belated stage in appeal, no ground for additional evidence is made out and learned Court below has erred in allowing the application preferred by petitioner/defendant under Order XLI Rule 27 CPC.

2. Principle of law as regards to how application for additional evidence is to be heard is not in doubt. The Hon'ble Supreme Court in ***State of Rajasthan v. T. Sahani***, 2001 (10) SCC 619, has held the application under Order XLI Rule 27 CPC has to be heard along with the appeal. In the present case, learned First Appellate Court vide its order dated 09.09.2025 has duly noticed that arguments were heard on the application as well as appeal. In view of the fact that application as well as appeal were heard together, I find that no error has been committed by learned First Appellate Court. In a case where appeal as well as application for additional evidence have been heard together, it is incumbent upon the learned Appellate Court to decide the appeal in eventuality of dismissal of application for additional evidence. However, if application is allowed, in such eventuality, appeal cannot be decided without leading of additional evidence and rebuttal of the same. Therefore, the approach of learned Appellate Court in passing the impugned order after hearing the appeal cannot be faulted with. First Appellate court was bound to defer decision of appeal & wait for additional evidence and its rebuttal. Only after consideration of additional evidence and rebuttal by other side if any, judgment can be passed by appellate court.

3. Learned counsel for petitioner has placed reliance upon judgment titled as ***Kulwant Singh and Others v. Mohindro @ Mohinder Kaur (deceased) through LRs and Others***, 2025 (1) Law Herald 566, however, the cited judgment has no applicability in the facts of present case. In cited case application and appeal were not heard together. Only



application was heard and was allowed. However, in the present case, application as well as appeal were heard together and in the eventuality of allowing the application, the appeal was rightly deferred to be decided after the conclusion of additional evidence.

4. Learned counsel for petitioner has also challenged the impugned order on the ground that same is liable to be set aside as learned First Appellate Court has erred in allowing the application without taking into consideration the fact that sale deeds were already in the knowledge of the defendant and were duly pleaded in the written statement. He asserts that merely because respondent had shifted entire blame on the part of his counsel in itself is not sufficient and since respondent was not diligent in prosecuting his case, the application for additional evidence was liable to be rejected.

5. For ready reference, Order XLI Rule 27 is reproduced :-

“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 —

(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.



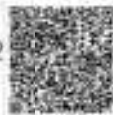
(2) *Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”*

6. One of the conditions for which additional evidence can be allowed at the appellate stage is to do complete justice between the parties and that is to pronounce the judgment in a just and effective manner or for any other substantial cause.

7. In the present case, the appeal has been filed by defendant challenging final decree of partition. That on one hand plaintiff is claiming suit property to be joint and on the other hand, defendant is claiming that suit property is not joint, as separate shares have been sold by vendors at different times and to prove this fact, defendant wants to adduce sale deeds which have been allowed by learned Appellate Court while passing the impugned order allowing additional evidence.

8. I feel that since main dispute is regarding whether the property is a joint property or a separate property, the sale deeds needs to be taken into consideration as would help court t`o pronounce judgment and would be required for just and complete justice between the parties. Therefore, no fault with the impugned order can be found. However, it is made clear that by merely admitting sale deed in additional evidence would not amount to acceptance of claim of defendant. Both the parties shall be free to take all legal and factual arguments including arguments that no appeal lies against final decree and that mere selling of specific portion of land would not amount to partition by metes and bounds as raised by learned counsel for the petitioner.

9. With above observations, the present petition is accordingly dismissed.



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19.09.2025

chiranjeev

**(PARMOD GOYAL)
JUDGE**

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No