

SUPREME COURT OF INDIA

Jatinder Singh (Minor) Thr. Mother

Vs.

Mehar Singh

C.A.No.5781 of 2008

(Tarun Chatterjee and Aftab Alam JJ.)

19.09.2008

ORDER

1. Leave granted.

2. This appeal is directed against the judgment and final order passed by the High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal No. 4174 of 2002, by which the second appeal filed by the appellants was dismissed as the High Court did not find any substantial question of law to be decided in the aforesaid second appeal.

3. In our view, this appeal can be decided on a very short question. The trial court as well as the appellate court and finally the High Court in the second appeal dismissed the suit filed by the plaintiffs/appellants for declaration challenging the sale deed dated 29th of May, 1989, executed by the respondent Nos. 1 to 3 in favour of respondent Nos. 9 and 10 as well as the compromise (Exhibit No. C1) dated 7th of April, 1986 in a suit title Ujagar Singh vs. Puran Singh, But it is an admitted position that before the High Court, the appellants filed an application under Order 41 Rule 27 of the *Code of Civil Procedure* for acceptance of additional evidence, namely, documents such as certificate of Military service, voter list of concerned assembly segment for the year 1982, receipt of house tax 1988-89, payment of chaowkdra of khariff 1986, rabi 1990, rabi 1991, khariff 1992, identity card issued by Election Commission of India, Ration Card etc.

4. While deciding the second appeal, however, the High Court had failed to take notice of the application under Order 41 Rule 27 of the *Code of Civil Procedure* and decide whether additional evidence could be permitted to be admitted into evidence. In our view, when an application for acceptance of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure was filed by the appellants, it was the duty of the High Court to deal with the same on merits. That being the admitted position, we have no other alternative but to set aside the judgment of the High Court and remit the appeal back to it for a decision afresh in the second appeal along with the application for acceptance of additional evidence in accordance with law.

5. For the reasons aforesaid, the impugned Judgment is set aside. The appeal is thus allowed to the extent indicated above. There will be no order as to costs.

6. We make it clear that we have not gone into the merits as to whether the application for acceptance of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure should be allowed or not, which shall be decided by the High Court at the time of decision of the second appeal in accordance with law. We also make it clear that we have not gone into the merits of the second appeal which shall also be decided by the High Court along with the application under Order 41 Rule 27 of the Code of Civil Procedure. Considering the facts and circumstances of the case, we request the High Court to dispose of the second appeal at an early date preferably within six months from the date of supply of a copy of this order to it.

7. In view of the order passed in C.A.No. of 2008 @ SLP(C)No.18759 of 2006, Contempt Petition) No.57 of 2008 is disposed of.

8. In view of our decision in the appeal itself, we do not feel inclined to entertain the Interlocutory Application filed by the petitioner during when the matter was kept for Judgment. Accordingly, the said application for interim direction is disposed of as infructuous.