

Mrs. Bhulia Devi and Others Vs Smt. Sheela Devi and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 11, 1998

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 41 Rule 27

Citation: (1998) 120 PLR 363 : (1998) 2 RCR(Civil) 669

Hon'ble Judges: Sat Pal, J

Bench: Single Bench

Advocate: A.P. Bhandari, for the Appellant; S.S. Sandhu, for the Respondent

Final Decision: Dismissed

Judgement

Sat Pal, J.

This petition has been directed against the order dated 4.8.1997 passed by the Additional District Judge, Faridabad. By this

order, the learned Additional District Judge has allowed the application filed by the respondents under Order 41 Rule 27 CPC seeking permission

of the court to lead additional evidence. Notice of this petition was issued to the respondents.

2. Mr. Bhandari, the learned counsel appearing on behalf of the petitioners submits that the impugned order passed by the learned Additional

District Judge is not legally sustainable inasmuch as, in the present case the respondents failed to comply with the condition precedent to the effect

that despite due diligence they could not lead this evidence at the relevant stage. He submitted that the present case squarely fell under Order 41

Rule 27(aa) and since the aforesaid condition has not been complied with in the present case, the impugned order was liable to be set aside. In

support of his submission, the learned counsel has placed reliance on a judgment of the Supreme Court in the case Jaipur Development Authority

Vs. Smt. Kailashwati Devi,

3. Mr. Sandhu, the learned counsel appearing on behalf of the respondents, however, submits that in terms of the law laid down by the Supreme

Court in the case of Billa Jagan Mohan Reddy and Another Vs. Billa Sanjeeva Reddy and Others, the respondents could be permitted to bring on

record a document which was relevant for the proper adjudication of the case. He, therefore, contends that since the Will is a document which has

been held to be relevant by the learned lower appellate court, there is no merit in this petition. *

4. After hearing the learned counsel for the parties and having perused the impugned order, I do not find any infirmity in the impugned order dated

27.5.1997 passed by the learned lower appellate court. It is correct that the learned lower appellate court has observed that the appellants have

been negligent in not leading this evidence at the relevant stage but at the same time, the learned lower appellate court has observed that in view of

the facts of the case, the whole controversy revolves around the Will which is necessary for proper adjudication of the case. Since the learned

lower appellate court itself has observed that for adjudication of the case, the Will in question has to be considered as evidence, I am of the view

that the present case falls under Order 41 Rule 27(b) and not Order 41 Rule 27(aa). In view of these facts, the present case is squarely covered

by a judgment of the Supreme Court in the case of Gurdev Singh and others Vs. Mehnga Ram and another, .

5. Accordingly the petition is dismissed. It is, however, made clear that the petitioner shall be at liberty to raise the point which has been raised in

the present petition in Second Appeal, in case the first appeal is decided against the petitioner. With this observation, the petition stands disposed

of

6. The parties are directed to appear through their counsel before the learned lower appellate Court on 25.5.1998.