

**(2013) 05 P&H CK 0216**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CR No. 3391 of 2013 (O and M)

Harbans Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision:** May 30, 2013

**Citation:** (2013) 171 PLR 361

**Hon'ble Judges:** K. Kannan, J

**Bench:** Single Bench

**Advocate:** RPS Cheema, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

K. Kannan, J.

The revision is against the order accepting an application under Order 41 Rule 27 filed by the respondent in appeal. The respondent was contesting a case filed by the petitioner who was the plaintiff for declaration and recovery of possession. The plaintiffs were making the claim on the basis of some revenue entries which had entered their father's name as the owner. The defence was that the property had been acquired by the government already and that the plaintiff has no title to the property. The trial Court had held that the plaintiffs claim to title has not been established. The Court had also found at the same time that the defendants had not proved that the property was acquired. Against the judgment of dismissal, when the appeal had been filed, the respondents sought to produce evidence of the land acquisition proceedings containing notification and award for acquisition of property and transferring of right to the said property for establishing an agricultural university. The contention by the plaintiff was that the defendants had not been diligent in production of the documents and they ought not to be permitted to file the same in appeal and the circumstances mentioned under Order 41 Rule 27 did not exist. The Court found that although the defendants had no proper excuse not to file them at the time of trial, it found that all the same that the documents could be received. The evidence ought to be adduced were public documents and

no proof regarding genuineness of the documents was necessary. It therefore found the documents to be relevant and allowed their application. It is against this order that this revision has been filed.

2. Learned counsel argues that the defendant had not even preferred an appeal against the finding rendered against them and that they had not established that the property had been acquired by the government. It is not stating a correct proposition of law, for the defendant need not prefer an appeal against a judgment which has resulted in dismissal of the suit. It shall be perfectly competent for the defendant to urge that the particular finding rendered against him was wrongly held and seek for reversal of the said finding. The Appellate Court was also justified in noticing that the document sought to be produced were public documents and no further proof would be necessary. It did not therefore think it essential to fetter its own discretion. I do not find any error in the order passed by the Court and I will find no justification for interference. The revision petition would require to be dismissed.

3. Before parting, I must observe that the procedure followed by the Appellate Court was erroneous and it has given a needless scope for a party to come up in revision before this Court at an interlocutory stage. Any application for reception of additional evidence shall not be taken independently of the disposal of the appeal. The application is to be taken up only along with the appeal and if the Court finds justification that the additional evidence must be received and it requires no further oral evidence the same may be received and considered while delivering the judgment. If the document is relevant and cannot be received without proof the Court will also be justified in remitting the matter to the trial Court or take evidence at its own forum for proof of documents. This procedure will obviate any scope for challenge by a party at an interlocutory stage. If the application itself is considered along with the appeal and the party aggrieved will take it as a ground of appeal and urge the correctness of the decision rendered by the Appellate Forum. With the above observations the civil revision is dismissed.