

(2017) 05 RAJ CK 0030
In the Rajasthan High Court
Case No : 68 of 2010

Jatanmal Fofaliya s/o Late shri Chhuttan Lal	APPELLANT
Vs	
Smt Chameli Devi@ Atto Devi	RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 41 Rule 27](#)

Citation : (2017) 05 RAJ CK 0030

Hon'ble Judges : Prakash Gupta

Bench : SINGLE BENCH

Advocate : RK Daga, ZA Naqvi, Sehban Naqvi

Judgement

1. This second appeal is directed against the judgment and decree dated 1st September, 2009 passed by the learned Additional District Judge No.9 Jaipur City, Jaipur in Civil Regular First Appeal No.64/2006 whereby the learned appellate court has dismissed the appeal filed by the plaintiff appellant and confirmed the judgment and decree dated 18th October, 2003 passed by learned Addl. Civil Judge (Jr.Div.) East, Jaipur City, Jaipur.
2. Brief facts, giving rise to this appeal are that a suit for eviction was filed by the plaintiff appellant on various grounds.
3. The same was dismissed by the trial court vide its judgment and decree dated 18th October, 2003. Feeling aggrieved against the judgment and decree of the trial court, plaintiff appellant filed regular civil appeal before the lower appellate court which also

came to be dismissed vide judgment and decree dated 1 st September, 2009.

4. Aggrieved against the judgments and decree of both the courts below the plaintiff appellants have filed the present appeal.

5. It is submitted by Shri RK Daga, learned counsel for the appellants that an application under Order 41 Rule 27 CPC had been filed by the appellants in the appellate court on 9 th January, 2009 and another application under Order 41 Rule 27 CPC had been filed by the respondents on 20.1.2007 and both the applications left undecided by the learned lower appellate court. It is further submitted that on this ground alone, the impugned judgment and decree of the lower appellate court is liable to be set aside and the matter is required to be remanded back to the lower appellate court to decide the same afresh.

6. On the other hand, Shri ZA Naqvi learned counsel for respondent No.1 fairly admitted that both the applications under Order 41 Rule 27 CPC have not been decided by the lower appellate court, therefore, he has no objection if the matter is remanded back to the lower appellate court.

7. I have considered the rival submissions made by the learned counsel for the parties.

8. It is not in dispute that applications under Order 41 Rule 27 CPC were filed by both the parties in the lower appellate court but the same are left undecided by the lower appellate court.

9. In *Hakam Singh & Anr. Vs. State of Haryana & Ors*, AIR 2008 SC 2990 Hon"ble Apex Court has observed as under:-

"That being the position, without going into the legality and propriety of the impugned order of the High Court passed in the aforesaid appeals, we set aside the same and remit back the case to the High Court for decision of the Appeals afresh on merits and in accordance with law along with the application for acceptance of additional evidence under Order 41 Rule 27 of the Code.

10. In *Jatinder Singh and Another Vs. Mehar Singh and Others* (2009) 17 SCC page 465 Hon"ble Apex Court in para No. 4 has observed as under: -

"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."

11. In the light of the aforesaid, the judgment and decree impugned are liable to be set aside and the matter is liable to be remitted to the appellate Court for a decision afresh.

12. In the result, the appeal is allowed. The judgment and decree dated 01.09.2009 passed by Additional District Judge No.9, Jaipur City, Jaipur in civil regular appeal No.64/2006 is set aside and the matter is remitted back to the appellate Court to decide it afresh on merits along with the applications under Order 41 Rule 27 of the Civil Procedure Code in accordance with the law. The parties are directed to remain present before the appellate Court on 5th July, 2017.

13. The appellate Court is directed to decide the appeal expeditiously but not later than six months from the date of receipt of this Order.

14. The office is directed to send back the record alongwith a copy of this order, forthwith.