

(1994) 11 P&H CK 0087
In the Punjab And Haryana At Chandigarh

Ram Dass

APPELLANT

Vs

Ranjit Kumar and Others

RESPONDENT

Date of Decision : 14-11-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (1995) 2 CivCC 332 : (1995) 109 PLR 452

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : O.P. Hoshiarpuri, for the Appellant; A.K. Chopra and N.K. Gupta, for the Respondent

Judgement

N.K. Kapoor, J.—This is defendants' regular second appeal against the judgment and decree of the Additional District Judge dated 16.1.1989 whereby the appeal filed by the plaintiffs was accepted, thus decreeing their suit.

2. At the motion hearing, it was argued by the counsel for the appellants that application for additional evidence was allowed without granting an opportunity to the appellants to produce evidence in rebuttal. Noticing this contention, notice of motion was issued and ultimately the appeal was admitted.

3. Today counsel for the appellant without going any further on the merit of the controversy raised in the appeal, primarily addressed arguments with regard to non grant of opportunity to the appellants to adduce evidence in rebuttal. According to the counsel, such a course has been deprecated by this Court as well as by the apex Court. Even otherwise, the appellants are entitled to lead evidence to rebut such evidence which has been ordered by the Court by way of additional evidence as per law. According to the counsel, two applications were filed by the plaintiffs for seeking permission to adduce additional evidence before the lower appellate Court dated 4.1.1988 and 30.11.1988. Pursuance to the notice issued by the Court, reply was filed by the defendants-present appellants. The applications were taken up for consideration and allowed on the day when the appeal was heard and decided i.e. on 16.1.1989. It was thus argued that the

impugned judgment and decree of the lower appellate Court is liable to be reversed on this short ground.

4. I have heard learned counsel for the parties and perused the documents referred to by the learned counsel for the appellants i.e. applications for additional evidence and the order passed by the Court on 16.1.1989. Admittedly, no opportunity has been afforded to the defendant-appellants to adduce evidence in rebuttal. In case reported as Harichand and Others Vs. Bachan Kaur and Others, a plea was raised that since additional evidence is in the nature of revenue record, no opportunity need be granted to the contesting side. This argument was repelled and it was held as under :-

"...It is a fundamental rule of justice that whenever additional evidence is led in, the opposite party has to be permitted to rebut it; otherwise it will lead to grave injustice, particularly when the evidence is of such a nature that it raises a rebuttal presumption, and that rebuttal presumption can only be displaced if an opportunity is allowed in that behalf. As no opportunity has been allowed merely on the ground that the additional evidence is in the shape of revenue record, it is fair that such an opportunity should be allowed and I hold accordingly."

5. Similarly, the apex Court in case reported as The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others, , held that in case a case for additional evidence is made out by the party seeking permission to adduce such evidence, an opportunity be given to the other side to rebut such evidence. Since no opportunity was granted to the appellants to lead evidence in rebuttal, I accept the appeal, set aside the judgment and decree of the Additional District Judge and remit the case back to decide it afresh on merits after affording reasonable opportunity to the defendant-appellants of leading evidence by way of rebuttal to the additional evidence which has already been permitted by the Court. Since the case is fairly old, Additional District Judge, Jalandhar, is directed to decide the appeal within four months from the passing of this order. The parties are directed to appear before the Addl. District Judge, Jalandhar, on 14.12.1994.