

(2014) 08 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 6786 of 2012 (O&M)

Vijay Kumar Aggarwal

APPELLANT

Vs

Khushal Singh

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 41 Rule 27(1)(b), Order 41 Rule 27(2)

Citation : (2015) 177 PLR 1

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Pankaj Jain, Advocates for the Appellant; Rajinder Sharma, Advocates for the Respondent

Judgement

Rakesh Kumar Jain, J.—This revision petition is directed against the order dated 6.10.2012 passed by the Additional District Judge, Amritsar by which application filed by the plaintiff/respondent under Order 41 Rule 27 of the Code of Civil Procedure, 1908 [for short the CPC] has been allowed. In brief, the facts narrated before me are that plaintiff filed the suit for possession by way of specific performance of an agreement to sell dated 12.12.1988. The defendant/petitioner denied the agreement. On the basis of evidence led by the parties to the suit, the trial Court found that there is an eclipse over the ownership rights of the defendant over the property in dispute therefore, the suit was decreed only for the reimbursement of earnest money along with interest. This led to the filing of two appeals both by plaintiff and defendant. During the pendency of the appeal, the plaintiff filed application under Order 41 Rule 27 of the CPC in order to bring on record certified copy of judgment dated 6.3.2012 decided by Additional Civil Judge (SD), Amritsar as per which the eclipse over the ownership rights of the defendant over the property in dispute was over and he had become owner of the property by way of aforesaid decree which was passed in between defendant and his brothers and sisters. The Appellate Court while allowing the application has observed that the said judgment and decree is stated to be

essential for decision of the controversy in this case and hence while allowing the application, the petitioner herein was compensated with cost of Rs. 500/-.

2. Learned counsel for the petitioner has vehemently argued that the impugned order is patently illegal as it runs contrary to Order 41 Rule 27(2) of the CPC, which provides that whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record reasons.

3. On the other hand, learned counsel for the respondent has argued that as per Order 41 Rule 27(1)(b) of the CPC, where the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the additional evidence can be taken.

4. I have heard both the learned counsel for the parties and after examining the record, am of the considered opinion that there is no error in the order under challenge. Order 41 Rule 27(2) of the CPC clearly provides that the application should not be allowed by the Court without recording reason. In the present case, however, it is argued by learned counsel for the petitioner that reasons are not clearly mentioned in the order as the Court has observed that the certified copy of the judgment of the Civil Court is stated to be essential for the decision given by the Court and has not given finding in this regard on its own. At the first blush, the argument appears to be attractive but after giving second thought it appears that the learned Court below has applied its mind to the effect that the judgment and decree of the Civil Court, which is sought to be placed on record, is essential for the decision of the controversy involved in this case and for that matter in the interest of justice, the application was allowed as it is not coming from the custody of the petitioner rather it is a document which is per se admissible. It is needless to mention that as per Order 41 Rule 27(1)(b) of the CPC, the Court can always take document in appeal as additional evidence, for the purpose of enabling it, to deliver the judgment effectively between the parties. In view thereof, I do not find any merit in the present petition and hence, the same is hereby dismissed.