

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(219)

**CR No.4509 of 2014(O&M)
Decided on: July 20, 2015.**

Shamsher Singh Saini

.... Petitioner

Versus

Bharto and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. D.K. Tuteja, Advocate,
for the petitioner.

Mr. Jitender Nara, Advocate,
for the respondents.

M.M.S. BEDI, J (ORAL)

The civil miscellaneous application for condonation of delay of four days in filing the revision is, in the interest of justice, allowed.

The petitioner has filed a suit for possession by way of partition alleging that the plaintiff-petitioner along with defendants-respondents is co-sharers of the suit property. Defendants No. 52, 54 and 57 were dead at the time of filing of the suit for possession.

The trial Court has rejected the plaint on the ground that the suit filed by the plaintiff-petitioner is nullity as it has been filed against the dead persons.

I have heard learned counsel for the petitioner and I am of the considered opinion that the order passed by the trial Court is not sustainable in the eyes of law. The plaintiff had filed the suit in the year 2001 as Civil Suit No.91 of 2001 for possession by way of partition claiming a

preliminary decree for partition regarding the property mentioned in the plaint. The said suit was decreed and a preliminary decree was passed in favour of the plaintiff. In appeal, Sh. Naresh Kumar Singhal, Additional District Judge, Rohtak vide judgment dated 06.12.2013 set aside the judgment of the trial Court and remanded the case to the lower Court again for fresh decision with a direction to issue proper notice to all the defendants on their addresses in accordance with the provisions as mentioned in Order 5 of CPC and to give findings on all the joint properties of the parties to the case and to determine/ascertain the share of all co-shares and to pass the preliminary decree of the entire joint land. The trial Court was directed to give fresh findings on issue No. 1 to 3 on merits.

The impugned order in the present case has been passed after the case was remanded. The trial Court appears to have adopted an evasive approach to reject the plaint after the case has been remanded for decision on merits. In case, it came to the notice of the trial Court that three of the defendants out of total sixty two defendants had died. The trial Court should have given an opportunity to the parties to implead the LRs of deceased defendants or could have determined the right, title, interest of all the parties to the suit on the basis of the material available.

Learned counsel for the petitioner has also informed that the order of the remand has also been challenged in SAO Nos. 44 and 45 of 2014. Without expression of any opinion regarding the pendency of said appeals, I am of the considered opinion that the impugned order rejecting the plaint after matter having been remanded is an illegal order. The order dated 18.02.2014 is hereby set aside with a direction to the trial Court to proceed in accordance with law.

Parties are directed to appear before the trial Court on 22.08.2015 for adjudication of the matter on merits. This decision will be subject to the final decision passed in SAO Nos. 44 and 45 of 2014 pending before this Court.

Disposed of in the aforesaid terms.

(M.M.S. BEDI)
JUDGE

July 20, 2015
harsha