

SAO No.15 of 2009 (O&M)

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

**SAO No.15 of 2009 (O&M)
Date of decision:24.02.2015**

Naved Lal and another ...Appellants

Versus

Guranditta and another ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mrs. Rupinder K. Thind, Advocate,
for the appellants.

None for the respondents.

Rakesh Kumar Jain, J.

This appeal has been filed by the defendants.

One Buta Ram had four children, namely, Vir Singh, Milkhi Ram, Lachhman Dass and Sadhu Singh. Lachhman Dass and Milkhi Ram both were issueless, whereas Sadhu Singh has a son, namely, Naved Lal (defendant no.1) and Vir Singh has two sons, namely, Guranditta and Dharam Pal (plaintiffs).

The plaintiffs filed a suit for declaration that they are owners to the extent of ½ share and defendant no.1 is also owner of ½ share in the property in dispute and sought permanent injunction to restrain defendant no.1 from selling or transferring the suit property in any manner more than his share to defendant no.2. It was alleged that the suit property was

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allotted to Buta Ram S/o Ishar Dass, grandfather of the plaintiffs and defendant no.1, by the Tehsildar (Sales), Amritsar for a consideration of ₹1,430/- in lieu of the property left behind by him in West Pakistan. Lachhman Dass and Milkhi Ram sons of Buta Ram relinquished their rights in the suit property in favour of the plaintiffs and defendant no.1 in equal shares during their lifetime and, thus, they became owners of ½ share each being the sons of other two sons of Buta Ram, namely, Sadhu Singh and Vir Singh. It is further alleged that defendant no.1 has entered into an agreement to sell the suit property for a total sale consideration of ₹1,50,000/-, even received a sum of ₹10,000/- from defendant no.2 and threatened to alienate the suit property in his favour. The plaintiffs had allegedly filed an application against defendant no.1 before the SSP, Amritsar on 23.04.2004 but no action was taken. Plaintiff no.1 also filed an application before the Tehsildar, Amritsar-I on 17.05.2004 in respect of the allotment of property no.995-A and the Tehsildar (Sales), Amritsar made a report on the application that since the property no.995-A/13, Haripura, Amritsar was sold in the name of Buta Ram S/o Ishar Dass, therefore, defendant no.1 has no right to enter into an agreement to sell with defendant no.2 beyond his share.

In reply, defendant no.1 has alleged that he is residing in the house in dispute with his father and other family members since long and denied the alleged allotment in favour of Buta Ram by the Tehsildar (Sales), Amritsar, rather it was alleged that Buta Ram had died before the partition in Pakistan. It was also alleged that since he had transferred the possessory

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rights of the suit property for a consideration of ₹1,50,000/- to defendant no.2, therefore, the suit has become infructuous.

On the pleadings of the parties, as many as 6 issues were framed. The trial Court dismissed the suit on 05.08.2006. Against the said judgment and decree, the plaintiffs filed the appeal. The lower Appellate Court set aside the judgment and decree of the trial Court and directed, on its own, the impleadment of legal heirs of Milkhi Ram as party/defendants to the suit, though no such application was filed by them.

Learned counsel for the appellants has submitted that the lower Appellate Court has erred in making out a new case in respect of the rights of the heirs of Milkhi Ram though no-one came forward as heir to claim the succession of Milkhi Ram in the property in dispute. It is also submitted that the allotment in favour of Buta Ram has also not been proved in accordance with law.

I have heard learned counsel for the appellants and examined the available record with their able assistance.

The suit filed by the plaintiffs was on the premise that they are owners of $\frac{1}{2}$ share of the suit property and the remaining $\frac{1}{2}$ share is owned by defendant no.1. It is not their case that the suit property is also owned to some extent by the heirs of Milkhi Ram who is alleged to have died issueless. No-one has filed application claiming himself to be the heir of Milkhi Ram to become a party and in the absence thereof, there was no occasion for the lower Appellate Court for invoking the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 to implead legal heirs of

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Milkhi Ram though their whereabouts were not known. Thus, the impugned order passed by the lower Appellate Court is patently erroneous.

In view thereof, the present revision petition is hereby allowed and the impugned order passed by the lower Appellate Court is set aside. However, the case is remanded back to the lower Appellate Court to decide the appeal filed before it on merits.

The parties are directed to appear before the lower Appellate Court on 20.03.2015.

February 24, 2015
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(**Rakesh Kumar Jain**)
Judge