

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

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**SAO No. 25 of 2009  
Date of Decision : 4.8.2015**

Jang Singh and another

.....Appellants

Versus

Bant Singh and others

.....Respondents

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

Present:- Mr. M.K. Singla, Advocate, for the appellants

Mr. Yogesh Kumar, Advocate, for respondents No. 1 & 2

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**M.M.S. Bedi, J.**

This is defendants' second appeal against orders passed by the Courts below. The plaintiff/respondent Teja Singh, now represented by his legal heirs, filed a suit for partition by metes and bounds pertaining to 1/6<sup>th</sup> share of the property measuring 9 kanals 16 marlas, mentioned in heading of the plaint.

The learned Civil Judge (Junior Division), Sunam, dismissed the suit by giving a finding that on account of non-inclusion of the other property, which was joint amongst the parties, the suit was bad for partial partition. The plaintiff filed an appeal. He was permitted to withdraw the suit with liberty to institute fresh suit after including the entire residential joint property subject to condition that the plaintiff shall pay costs of ₹ 15,000/-within a period of one month to the defendants.

Aggrieved by the said order, the defendants have preferred this

appeal, on the ground that there is no formal defect in the suit, as such, the permission to withdraw the suit at appellate stage, is not fair and just.

I have heard learned counsel for the appellants and carefully gone through the judgments passed by the Courts below. The fact that there are other joint properties which are held by the plaintiff and the present defendant/appellants is not disputed. It is settled preposition of law that filing of suit for partition pertaining to a part of the property held jointly, is not maintainable. The rights of all the co-sharers have to be determined viz a viz the entire joint property held by the co-sharers. In a suit for partition or for separate possession, the filing of suit claiming partition of part property held jointly by all the co-sharers, is, on the face of it, a legal defect. The plaintiff has been given permission to represent through LRs and to withdraw the suit with liberty to file afresh suit after including the joint property.

No ground is made out for interference in the order passed by the lower Appellate Court. Dismissed.

Dismissal of the appeal will not, in any manner, be prejudicial to the right of the parties in the fresh suit filed by the plaintiff or his heirs.

**(M.M.S. BEDI)**  
**JUDGE**

**4.8.2015**  
*Ashwani*