

SAO-28-2015 (O&M)

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

**SAO-28-2015 (O&M).
Decided on: March 20, 2015.**

Bahadar Singh and another

..... Petitioner(s)

Versus

Harpal Singh and others

..... Respondent(s)

*** * ***

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

**PRESENT Mr.Anil Kumar Garg, Advocate,
for the appellants.**

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

Appellants have filed this appeal against the order passed by the first appellate Court dated 30.10.2014, while deciding the appeal of Harpal Singh respondent No.1 against Satnam Kaur and Kartar Singh defendant-respondent Nos.2 & 3. By virtue of impugned order in a suit for final decree, it was observed that the lower Court had committed illegality in dismissing the objections filed against the report of Local Commissioner by respondent No.1 and had wrongly ordered for drawing of the final decree on the basis of report of Local Commissioner. The matter has been remanded to the trial Court for redetermination of the mode of partition after hearing objections to the report of Local Commissioner submitted by respondent No.1.

So far as the appellants are concerned, they claim

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that they had purchased the share of respondent Nos.2 & 3 in the land in dispute on 16.4.2007, whereas the suit for partition was filed on 2.5.1994 by respondent No.1 against respondent Nos.2 & 3 which was decreed on 26.8.1996. The plaintiff-respondent No.1 had filed an application for passing of final decree which was allowed on 5.11.2011 and Local Commissioner had been appointed to demarcate the shares of the co-owners taking into consideration the possession of the contesting parties.

The validity of order remanding the case to consider the objections of respondent No.1 has been questioned by the appellants claiming that they have acquired interest in the property having purchased the same from the co-sharer respondent Nos.2 & 3 who are defendants before the civil Courts at the time of passing of preliminary decree and final decree.

Counsel for the appellants has submitted that remand is contrary to the law laid down by different Courts in the following judgments: -

(i) **Harbans Singh Vs. Dalip Singh and others, 2010 (4) PLR 625;**

(ii) **Jagtar Singh Vs. Bachan Singh, 2010 (4) PLR 447;** and

(iii) **Muthangi Ayyana Vs. Muthangi Jaggarao and others, AIR 1977 SC 292.**

I have considered the contentions of the learned

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counsel for the appellants and I am of the opinion that the appellants were neither a party before the Courts below at the time of passing of preliminary decree nor they were party at the time of passing of final decree in the case of the mode determined by the Local Commissioner. The appellants have also moved an application under Order 1 Rule 10 CPC for impleading them as defendants-respondents being necessary parties. A copy of application dated 10.3.2015, has been appended as Annexure A10. The appellants for the first time have claimed their right, title and interest in the property by moving application dated 10.3.2015. Their right on the basis of said application are to be considered and determined by the trial Court as they have stepped into the shoes of defendants-co-sharers, respondent Nos.2 & 3. Application under Order 22 Rule 10 CPC, has also been filed along with this appeal for considering the claim of the appellants.

Taking into consideration the totality of the circumstances, I am of the opinion that there is no ground to permit the appellants to claim their right of appeal especially when they were not parties before the Courts below and application for impleadment under Order 1 Rule 10 CPC having been filed for the first time before the trial Court after remand on 10.3.2015.

Without expression of any opinion on merits of the case or the right, title or interest of the appellants, this appeal is dismissed for lack of bona fide and locus standi, without prejudice to

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the rights of the appellants to contest the claim of respondent No.1 by stepping into the shoes of the co-sharers from whom they have allegedly acquired right, title and interest in the property.

The application for condonation of delay of 48 days in filing this appeal does with the aforesaid result of the appeal.

March 20, 2015.
rka

(M.M.S. BEDI)
JUDGE