

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

**SAO No.63 of 2015 (O&M)
Date of Decision:02.09.2015**

Harpreet Singh and others ... Appellants

Versus

Sham Lal ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sandeep Arora, Advocate
for the appellants.

RAJ MOHAN SINGH, J. (Oral)

CM No.17696-CII of 2015

Prayer in this application is for condonation of delay
of 18 days in filing the appeal.

For the reasons mentioned in the application, delay
of 18 days in filing the appeal is condoned.

Application stands disposed of.

SAO No.63 of 2015

1. In suit for possession in respect of house, trial Court dismissed the suit of plaintiff. Plaintiff claims title to the property on the basis of sale deed dated 06.06.1986 through one Raj Rani. It is an admitted fact that there is a sale deed of this house in favour of Kishan Lal and Nasib Chand, who are not party to the suit. Raj Rani also admitted that she does not know if the ownership of suit property is also in the name of Kishan Lal and Nasib Chand. In a way, she has not denied the ownership of Kishan Lal and Nasib Chand.

2. Trial Court decided the issues No.1 and 6 collectively against the plaintiff. Under issue No.2 suit was held to be not maintainable. Under issue No.3 Court held that plaintiff has not come to the Court with clean hands. Issue No.4 in respect of limitation has been decided in favour of the plaintiff. Issues No.5 and 7 were held in favour of plaintiff as the same were not pressed by the defendants. Resultantly, suit was dismissed.

3. Lower Appellate Court has observed that the trial Court has made out a new case beyond pleadings and evidence of the parties. Once two rival owners have come to fore, in respect of one property then it was obligatory on the trial Court to give opportunity to the plaintiff to implead Kishan Lal and Nasib Chand as party defendants. Appellate Court set aside the findings under issues No.1 and 6 and remanded the case back to the trial Court with a direction to give opportunity to the plaintiff to amend his pleadings and to array Kishan Lal and Nasib Chand as party to the suit and then to proceed and determine the matter as per law.

4. Learned counsel for the appellants contends that the stand of defendants in the written statement was very categorical vis-a-vis Kishan Lal and Nasib Chand being owners of the property by virtue of sale deed in their favour. Suit was claimed to be bad for non-joinder of necessary parties. Even if the objection raised by the defendants-appellants is taken to be on face-value, the cause of defendants-appellants in very

nature of their entitlement on the basis of agreement is not going to yield any result in the presence of anomalous situation on record.

5. Apparently, when there is an admission on the part of plaintiff himself that there is a sale deed in favour of Kishan Lal and Nasib Chand and Raj Rani has also admitted this fact by giving vague reply of denial, it will be in fitness of things that the factum of ownership in respect of suit land should be determined with reference to evidence so as to facilitate all the concerned parties to get their respective rights adjudicated upon by the trial Court, where all the parties would have adequate opportunity to prove their case.

6. The appellants-defendants are claiming their rights on the basis of agreement to sell dated 09.06.1995 from plaintiff in favour of their predecessor Gurcharan Singh. Even by this remand order the appellants cannot be at disadvantageous stage, because there will be clear and unambiguous determination of status of owner which would facilitate the appellants also, in getting their rights adjudicated. In any case, no prejudice is going to be caused to the appellants.

7. By now, it is settled principle that in case of finding ambiguity of such type, Appellate Court is justified in remanding the case for proper impleadment of parties. Reliance can be placed on **Rattan Chand and another Vs. Dharam Singh and**

others 2011 (2) Civil Court Cases 849 to observe that suit

cannot be dismissed straightway on account of non-joinder of necessary parties, without affording the plaintiff an opportunity to implead such party by remanding the case. By remand order, nothing illegal has been observed by the Lower Appellate Court and the same is fully in consonance with the observations made in **Rattan Chand's** case (supra).

8. With these observations, impugned remand order dated 22.04.2015 passed by Additional District Judge, Jalandhar is upheld.

9. Consequently, this appeal is dismissed in limini.

September 02, 2015
prince

(RAJ MOHAN SINGH)
JUDGE