

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

**RSA No.4378 of 2009 (O&M)
Date of decision:05.08.2016**

Sulakhan Singh and others ... Appellants

Vs.

Smt. Ajit Kaur and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vipin Mahajan, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.13210-C of 2009

For the reasons stated in the application, duly supported by an affidavit, delay of 329 days in re-filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.13212-C of 2009

For the reasons stated in the application, duly supported by an affidavit, delay of 16 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.4378 of 2009 (O&M)

Appellant-plaintiffs are aggrieved of the findings rendered in paragraph 24 and 25 by the Lower Appellate Court while dismissing the appeal filed by the defendants against the judgment and decree rendered by the trial Court in a suit for declaration to the effect that appellant-plaintiffs

are owner in joint possession of the property to the extent of 1/5th share being legal heirs of their deceased father Swaran Singh son of Bua Ditta.

Mr. Vipin Mahajan, learned counsel appearing on behalf of the appellant-plaintiffs submits that the aforementioned suit was decreed by the trial Court which was assailed by the defendants before the Lower Appellate Court. The appeal has been dismissed qua declaration by rendering the findings in paragraph 24 and 25 of the Lower Appellate Court which read thus:-

“24. In the present case, the plaintiffs are claiming the ownership of the suit property originally owned by Bua Ditta. It was the duty of the plaintiffs to plead all the necessary facts required for proper decision of the case but the plaintiffs had not impleaded all the legal heirs of Bua Ditta. From the pleadings in the plaint, it is transpired that Bua Ditta was survived by four sons namely, Swaran Singh, Hazara Singh, Dalip Singh and Hansa Singh and two daughters namely Shanti and Dhanti. Names of some of these persons are also mentioned in the copy of jamabandi Ex.P17. Defendant Ajit Kaur is the widow of defendant No.2, Dalbir Singh and defendant No.3 Kashmir Singh are sons of Hazara Singh. Defendant No.4 Surat Singh is the son of Shanti and plaintiffs are sons of Swaran Singh. Pedigree table as emerged from the contents of the plaint and jamabandi Ex.P.17 is drawn as under:-

Bua Ditta

Swaran Singh (son)	Hazara Singh (son)	Dalip Singh (son)	Ajit Kaur widow	Hansa Singh (son)	Santi (D)	Dhanti (D)
	Dalbir Singh	Kashmir Singh		Surat Singh		
Sulakhan Singh	Sarup Singh	Jasbir Singh	Ajit Singh	Amrik Singh		

25. *Legal heirs of Hansa Singh and Dhanti are not impleaded as parties to the suit. All the legal heirs of other sons and daughters of Bua Ditta were not disclosed. It is not disclosed that parties to the suit are the only legal heirs of Bua Ditta and no body else is the legal heir of Bua Ditta. In the absence of disclosing and impleading all necessary parties to suit, declaration cannot be given in favour of the respondent/plaintiffs that they are owners in possession of the suit land. Hence, the findings of the learned court to this effect are erroneous and are set aside.”*

No doubt, all the LR’s of other sons and daughters of Bua Ditta have not been impleaded as party as other LR’s are having enuring benefit of the declaration except for plaintiffs.

I am of the view that all the surviving LR’s of Buta Ditta and their predecessor in interest would be entitled to the declaration in the manner and mode, the trial Court has granted, instead only plaintiffs.

With the aforementioned modification, the appeal stands disposed of.

(AMIT RAWAL)
JUDGE

August 05, 2016
savita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No