

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

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Regular Second Appeal No.759 of 2016 (O&M)
Date of Decision: April 07, 2016

Sunita

...Appellant

Versus

Ram Kumar Dhanda (now deceased) through his legal heirs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.K. Malik, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.2068-C of 2016

Prayer in this application is for dispensing with the filing of certified/true typed copy of grounds of appeal dated 08.01.2014 and Annexures A-1 and A-2.

Application is allowed.

Filing of aforesaid documents is dispensed with subject to just exceptions.

CM No.2069-C of 2016

Prayer in this application is for impleading the legal representatives of Ram Kumar Dhanda son of Diwan Singh, respondent No.1, who is stated to have died on 03.03.2015 leaving behind the legal representatives, as has been mentioned in para 2 of the application. The application is supported by the affidavit of Smt. Sunita Devi, appellant.

For the reasons mentioned in the application, the same is allowed subject to just exceptions for the purpose of present litigation alone.

Legal representatives of appellant-Ram Kumar Dhanda are

impleaded as respondents to the present appeal.

RSA No.759 of 2016

Challenge in this appeal is to the judgment and decree dated 05.12.2013 passed by the Additional Civil Judge (Senior Division), Hisar, whereby the suit filed by the respondents-plaintiffs for declaration to the effect that respondents-plaintiffs 1 to 4 being legal heirs of the pre-deceased daughter of Ram Kumar Dhanda (since deceased), are entitled to 1/4th share, along with a suit for permanent injunction restraining the appellants from interfering, has been partly decreed, appeals against which preferred have been dismissed by the Additional District Judge, Hisar, on 20.08.2015.

2. It is the contention of learned counsel for the appellant that the findings as recorded by the Courts below cannot sustain in the light of the fact that an earlier suit has been preferred by Ajmer Singh, proforma respondent No.6-defendant No.3. The said suit being Civil Suit No.208C which was decided on 13.04.2011 would be binding upon the respondents-plaintiffs, therefore, denying them the benefit of filing the second suit. His further contention is that the decree, as has been passed by the Courts below, cannot sustain as the appellant-defendants are in possession of the property.

3. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments but do not find any merit therein.

4. It is apparent from the judgment Exhibit D-4 that the respondents-plaintiffs were not a party to the suit and, therefore, the principle of *res judicata* would not apply. It has in detail been addressed by

the Courts below and on the basis of the arguments put forth by the counsel for the appellant, no dent could be carved on such a finding returned.

5. It is not in dispute that the respondents-plaintiffs would be entitled to 1/4th share by inheritance as successors of Smt. Chandro. The said aspect has also been dealt with in detail by the Courts below which findings also cannot be faulted with.

6. No other point has been argued by the counsel for the appellant.

7. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

8. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

9. In the light of the dismissal of the appeal, the application for stay i.e. CM No.2070-C of 2016, stands disposed of as infructuous.

April 07, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE