

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

**SAO No.18 of 2016 (O&M)
Decided on: 30.05.2016**

Satbir Singh

....Appellant

Versus

Hardev Singh

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. I.S. Pabla, Advocate
for the appellant.

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

REKHA MITTAL, J.

The present appeal has been directed against order dated 07.01.2016 passed by the Additional District Judge, Kurukshetra whereby the appeal preferred by the respondent/defendant against the judgment and decree dated 12.02.2014 was allowed, the judgment and decree passed by the trial Court has been set-aside and the matter has been remitted to the trial Court for decision afresh after framing additional Issue No.5A.

Satbir Singh son of Sh. Richhpal Singh son of Sh. Gian Singh filed a suit for partition of the suit property i.e. House No.331/3, Sikh Fort Shahabad Markanda, Tehsil Shahabad Markanda, District Kurukshetra, detailed in headnote of the plaint. It is averred that vide gift deed and site plan dated 31.12.2007, Sh. Richhpal Singh gifted ½ share of the property in dispute to plaintiff and he has become owner of

½ share in the suit house. There is covered area of 676 sq. feet on the ground floor and 543 sq. feet on the first floor. The property is ancestral which was previously owned and possessed by Gian Singh. The construction on the property in dispute has been raised by Hardev Singh, Richhpal Singh and grandfather of the plaintiff. After death of Gian Singh, father of the plaintiff and defendant succeeded to the suit property in equal share.

The defendant resisted claim of the plaintiff with the averments that the answering defendant has been residing in his house, exclusively possessed by him as true owner. The plaintiff has no concern, right or title with the house owned and possessed by the defendant. The portion shown in Red colour and marked as ABCD, store marked as EFGH and PQRS (toilet) is exclusively owned and possessed by the answering defendant wherein the defendant and his family members have been residing since long. The house consists of triple storey building. The plaintiff along with his father Richhpal Singh has been residing in their own house shown in site plan, marked as ABIJ and IKLMNOL, consisting of double storey building.

On due consideration of issues framed for determination, evidence adduced on record, rival submissions made by counsel for the parties, the learned trial Court accepted plea of the appellant/plaintiff and he was held entitled to get partition of the house in question to the extent of his ½ share by metes and bounds and accordingly, a preliminary decree was passed.

Feeling aggrieved by the judgment and decree passed by

the trial Court, the respondent/defendant – Hardev Singh preferred an appeal that has been allowed by the First Appellate Court and the matter has been remitted to the trial Court for adjudication afresh.

Counsel for the appellant has submitted that even if the Appellate Court has framed additional issue namely Issue No.5A '*whether the suit is bad for non-joinder of necessary parties i.e. daughters of Gian Singh. OPD*', the Appellate Court was competent to call for a report from the trial Court on the additional issue but framing of additional issue itself cannot justify setting-aside the judgment and decree passed by the trial Court and decision of the case afresh, as has been done by the Court of appeal. It is further argued that Gian Singh, the erstwhile owner of the suit property left behind three daughters but two of them namely Smt. Kuldeep Kaur and Smt. Jagpal Kaur had executed their duly sworn affidavits Exhibits D5 and D6 relinquishing their right in the suit property and on that basis, the suit property was transferred in the name of Richhpal Singh and Hardev Singh sons of Gian Singh in the records of Municipal Committee, Shahabad. It is further argued that the third daughter of Sh. Gian Singh namely Surinder Kaur pre-deceased Sh. Gian Singh and the daughter of Smt. Surinder Kaur appeared in the witness-box and admitted that in the records of Municipal Committee, the suit property stands in the name of her maternal uncles i.e. sons of Sh. Gian Singh. It is argued with vehemence that in view of the affidavits Exhibits D5 and D6 furnished by Smt. Kuldeep Kaur and Jagpal Kaur coupled with the statement made by daughter of Smt. Surinder Kaur, there is no requirement to

frame an additional issue with regard to the suit being bad for non-joinder of necessary parties.

I have heard counsel for the appellant and perused the paperbook particularly the order impugned.

Indisputably, the appellant has claimed ownership of the suit property to the extent $\frac{1}{2}$ share on the basis of alleged gift deed purported to be executed by his father Sh. Richhpal Singh. As per plea of the appellant/plaintiff, the suit property was previously owned by Sh. Gian Singh, grandfather of the plaintiff. There is also no dispute about the fact that Sh. Gian Singh left behind two sons and three daughters. The daughters of Sh. Gian Singh have not been impleaded as a party in the present *lis*. It is not plea of the appellant/plaintiff that Sh. Gian Singh left behind any testament in favour of his two sons thereby excluding his daughters from inheritance. This fact alone is sufficient to falsify and belie claim of the appellant/plaintiff that after death of Gian Singh, the suit property was inherited by Sh. Richhpal Singh and Hardev Singh to the extent of $\frac{1}{2}$ share each.

Assuming that two daughters of Sh. Gian Singh executed affidavits Exhibits D5 and D6 relinquishing their right in the suit property, the same is not sufficient to accept contention of the appellant that Kuldeep Kaur and Jagpal Kaur ceased to be co-owners of the suit property. The third daughter of Sh. Gian Singh namely Surinder Kaur (since deceased) was not impleaded as a party to the *lis*. Even if Smt. Surinder Kaur had passed away either during lifetime of Sh. Gian Singh or before institution of the suit, her heirs are required to be impleaded

as a party for determination of share of all the co-owners in the suit property, sought to be partitioned by the appellant/plaintiff.

Counsel for the appellant has not disputed that in a suit for partition, all the co-owners of the suit property are necessary parties for complete and effective adjudication of the matter in controversy. As the appellant did not join all the co-owners of the suit property as a party, no fault can be found in the judgment passed by the Court of appeal in framing an additional issue and further summoning daughters of Gian Singh for deciding question of ownership/co-ownership of the property in question. Keeping in view the fact that daughters of Gian Singh are required to be impleaded as a party to the *lis*, merely calling for a report on the additional issue from the trial Court, in the circumstances, would not serve the desired purpose. On the contrary, after impleading the necessary parties and giving them an opportunity to be heard, the matter requires re-trial and adjudication afresh. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

30.05.2016

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(REKHA MITTAL)
JUDGE