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

RSA-2011-1991

Date of decision : 12.03.2018

Sahi Ram and others

... Appellant(s)

Versus

Ran Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Verma, Advocate
for the appellant.

Mr. Sunil Kumar, Advocate for
Mr. D.S. Bishnoi, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are, in the present regular second appeal, against the judgment and decree dated 22.07.1988, whereby the suit filed by the respondents-plaintiffs for possession of the suit property, which was decreed by the trial Court and the appeal preferred against the same, has been dismissed by the lower Appellate Court on the ground that the appeal was filed against the dead person Dhonkal.

Learned counsel for the appellants-defendants submits that during the pendency of the appeal, it was not brought to the notice of the Court that Dhonkal had died. The appeal was filed as per the memo of parties in the suit. It was the duty of the respondent-plaintiff to bring on record the factum of the death of the deceased, much less, an opportunity should have been given to bring on record Legal Representatives of

Dhonkal. Without such opportunity, the appeal has been ordered to be abated.

This fact is not controverted by the learned counsel representing the respondents.

Keeping in view the aforementioned facts and circumstances, judgment and decree of the lower Appellate Court resulting into dismissal of the appeal without adjudication on merits, is not sustainable in the eyes of law, for, an opportunity should have been given to the counsel for the appellant/defendant or the appellants/defendants to bring on record the Legal Representatives of Dhonkal as the factum of death was not brought to the notice or was in the knowledge and once brought to the notice, the Court below should not pass the judgment and decree, under challenge.

Accordingly, the judgment and decree dated 22.07.1991 of the lower Appellate Court is set aside and the matter is remitted to the lower Appellate Court to decide the appeal on merits, by giving the opportunity to the appellants-defendants to bring on record Legal Representatives of Dhonkal, within a period of six months from the date of the receipt of the certified copy of this order.

With the aforesaid observations, the appeal stands disposed of.

12.03.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

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Whether Reportable Yes/ No