

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

RSA No.1259 of 2003 (O&M)

Date of Decision:06.12.2018

Mohinder Kumar and others

...Appellant(s)

Versus

Sudha Jain

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Karan Bhardwaj, Advocate for the appellants.
Mr.Amit Jain, Advocate for the respondent.

ANIL KSHETARPAL, J.

CM-9626-C-2005

Applicant/appellants seek to produce on record additional evidence in the shape of a registered sale-deed executed in the year 1869 so as to establish that the property is ancestral.

The plea which is sought to be introduced through additional evidence is beyond pleadings and also contrary to the case set up in the pleadings. Hence, the application for additional evidence is dismissed.

Main case

The defendants-appellants are in the regular second appeal against the findings of fact arrived at by the learned first appellate court.

In a suit for partition of the property, the learned trial court as well as the learned first appellate court have found that the property is joint. However, on factually incorrect reasons, the learned trial court dismissed the suit filed by the plaintiff which has been reversed by the learned first appellate court. The reasons given by the learned first appellate court are as

under:-

- i) Sudha Jain claims the property on the basis of Will which has not been proved.
- (ii) All the legal heirs of Panna Lal are not represented. It may be noted that the originally suit was filed by Panna Lal against Sunder Lal. Both were brothers and co-owners in the property. After the death of Panna Lal, Sudha Jain was impleaded as legal heir on the basis of a Will. In fact the rights of Panna Lal on the date of institution of the suit were to be determined.
- (iii) As regards non-joinder of other legal heirs of Sunder Lal, it may be noted that Sunder Lal was the original defendant in the suit. Since he died, therefore, his legal heirs were impleaded. Thereafter Mohinder Kumar, one of the legal heir, was given up because the estate of Sunder Lal was represented by other legal heirs.

Although, learned counsel for the appellant has made sincere attempt, however, could not persuade this Court to take a different view that of the learned first appellate court. The reasons given by the learned trial court, as noted above, were against the record. Still further, counsel for the parties have informed that pursuant to this preliminary decree for partition, final decree has already been passed.

At the time of admission on 7.3.2012, following substantial questions of law were framed:-

- (i) Whether the suit is bad for non-joinder of necessary parties or not?
- (ii) Whether Sudha Jain has a locus standi to proceed with the suit in the absence of other legal representatives of deceased Panna Lal or not?
- (iii) Whether all the co-sharers in the suit property are liable to be impleaded as necessary party or not?
- (iv) Whether the plaintiff has a right to half share in the suit property or not?

As regards first question of law, as rightly held by the learned first appellate court that the suit is not bad for non-joinder of necessary parties because the original suit was against Sunder Lal and not against the heirs of Sunder Lal.

So far as second question is concerned, Sudha Jain was brought on record as legal heir on the basis of Will executed by her father bequeathing the property to her and as such she has been brought on record as legal heir to proceed with the suit.

As regards third question, all the co-sharers in the suit property on the date of institution of the suit were impleaded and thereafter only an application to bring on record the legal heirs of original parties were filed. Once the application for bringing on record the legal heirs is filed, the court is only to examine whether the estate of the deceased party is represented or not.

As regards question No.4, in view of the concurrent findings of fact which are not shown to be erroneous, the plaintiff has a right to the extent of half share in the property.

In view of the above, there is no ground to interfere. The present regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

06.12.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No