

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

SAO No.45 of 2011 (O&M)
Date of Decision.29.08.2018

State of Punjab and others

.....Appellants

Vs

Surjit Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Maloo Chahal, DAG, Punjab
for the appellants.

Ms. Deepali Puri, Advocate
for respondent No.1.

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AMIT RAWAL J. (ORAL)

The State of Punjab-defendants in civil suit has preferred present Second Appeal (hereinafter called SAO) against the order dated 20.09.2010 passed by the Additional District Judge, Ludhiana whereby, while allowing the application filed under Order 1 Rule 10 CPC, filed by Jarnail Kaur widow, Malkit Singh son, Gurmit Kaur, Paramjit Kaur, Suridner Kaur and Palwinder Kaur, daughters of Piara Singh for impleading as parties in the suit on behalf of the plaintiffs claiming to be the legal heirs of Piara Singh on the basis of Will, set aside the judgment and decree of the trial Court and remitted the matter back with direction to implead the aforesaid parties by giving opportunity to file written statement and lead evidence.

Plaintiffs, Surjit Singh and Harvinder Singh sons of Piara Singh, instituted the suit in the year 2000 averring that the property was allotted in the year 1995 to Ganga Singh, grandfather of the plaintiffs, who raised the construction. On demise of Ganga Singh,

on the basis of Will dated 4.2.1963, property was inherited by their father Piara Singh. Piara Singh also executed a Will dated 24.09.1979 in favour of plaintiffs. The property situated was in village and therefore, no revenue record existed but had been in their possession, thus, claimed declaration, as the Department had started visiting premises for vacating the plaintiffs, by filing suit.

State of Punjab contested the suit on the premise that though the property was situated in *lal lakir* but denied the allotment in favour of Ganga Singh, much less, issuance of any electric connection.

The trial Court on the basis of evidence, brought by the State of Punjab, found that plaintiffs were ordered to be evicted from the suit property vide order dated 26.11.2002. Thereafter, the plaintiffs preferred a petition under Section 11 of the Punjab Village Common Land Regulation Act, 1961 which was allowed vide order dated 28.05.2004 but the said order was set aside by the Director, Rural Development and Panchayat Department, Chandigarh on 12.07.2006. The trial Court dismissed the suit, but in appeal laid before the lower Appellate Court, an application was moved by Jarnail Kaur, Malkit Singh, Gurmit Kaur, Paramjit Kaur, Surinder Kaur and Palwinder Kaur claiming to be legal heirs of Piara Singh. It is, in these circumstances, as noticed above, the judgment and decree of the trial Court was set aside and the matter was remanded back for fresh consideration.

Learned Counsel for the State submitted that as per provisions of Order 22 Rule 4 and 11 CPC, all legal representatives

are not necessary in every case. The fact remains that estate of Ganga Ram, Piara Singh was represented. In support of aforementioned contention, reference was laid to Division Bench judgment of this Court in **Sardara Singh Vs. Harbhajan Singh and others 1974 PLJ 341** which has been rendered by taking into consideration consistent view of Lahore High Court. It was also submitted that even if at all, there was a dispute *inter se* between the parties, they had an independent and appropriate remedy to institute the suit and cannot be impleaded in a suit under Order 1 Rule 10 CPC, as application under Order 1 Rule 10 CPC after the decree is not maintainable.

Ms. Deepali Puri, learned counsel appearing on behalf of respondent No.1 submitted that there is no error in the judgment and decree of the lower Appellate Court. The defendants could have established better title *vis-a-vis* the evidence led by the plaintiffs, thus, urges this Court for upholding the order under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of learned counsel appearing for the State. For the sake of brevity, para 6 of the judgment referred supra reads as under:-

“6. Mr. Jain, learned Counsel for the appellants then argued that Harbhajan Singh, respondent No. 1, is dead and although his three sons, respondents Nos. 2 to 4, who are also the transferees by reason of the exchange, are on record, yet his two daughters though impleaded, have not been served. In our opinion, it is not necessary to serve them because their interests are fully protected

by their three brothers who are already on record. It is not necessary in every case to bring all the legal representatives on record. What has to be seen is whether the estate is effectively represented. In this case it is so.”

On plain and simple reading of the aforementioned provisions, it is crystal clear that even if there was a dispute amongst siblings i.e. legal representatives of Piara Singh, the same could have been adjudicated in independent proceedings but the fact remains that Piara Singh derived title from estate of Ganga Singh. The grievance as espoused in the suit *vis-a-vis* the plaintiffs and applicants sought to be impleaded, is identical. No better evidence could have been led. In my view, it tantamounts to giving opportunity to the plaintiffs to fill up the lacuna by moving application on behalf of sisters.

The suit was filed without disclosing the full particulars of the legal representatives of Piara Singh. This fact has totally been ignored by the lower Appellate Court, therefore, there is misdirection and perversity.

Be that as it may, the grievance of the daughters *vis-a-vis* the claim of the plaintiffs claiming to be sons could have been espoused in separate proceedings and the outcome of the decree would be binding on all. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in **Suresh Kumar Bansal Vs. Krishna Bansal and another 2010 (2) SCC 162.**

Accordingly, the order remanding the matter is set aside

and the appeal filed by the plaintiffs is ordered to be restored to its original number.

Parties are directed to appear before the lower Appellate Court through their counsel on 08.10.2018.

This Court is sanguine of the fact that the lower Appellate Court shall make an endeavour to decide the appeal as early as possible, preferably within a period of four months from the date of receipt of certified copy of this order.

The appeal stands allowed in the above terms.

(AMIT RAWAL)
JUDGE

August 29, 2018
Pankaj*

Whether Speaking/Reasoned	Yes
Whether Reportable	No