

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

**SAO No.19 of 2012 (O&M)
Date of decision : May 25, 2018**

Madan Mohan Bali

..... Appellant

Versus

Ramesh Chander Bali and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Munish Gupta, Advocate for the appellant.

Mr. Sandeep Bansal, Advocate for

Mr. Arun Bansal, Advocate for respondent No.1.

None for respondent No.2.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present second appeal against order is the judgment dated 10.01.2012 passed by learned Addl. District Judge (Adhoc), Fast Track Court-I, Hoshiarpur, vide which after framing three additional issues, the plaintiff was directed to implead Bhushan Lal as one of the defendants and the case was remanded with a direction to the trial Court to give reasonable opportunities to each of the parties, in case they want to lead evidence on the additional issues.

I have heard learned counsel for the parties and have also carefully gone through the case file.

It comes out that Ramesh Chander Bali had filed a suit for partition of his 1/3rd share against his brothers, namely, Madan Mohan Bali and Ravi Kant Bali. The trial Court decreed the suit against which one of the defendants, namely, Madan Mohan Bali, filed an appeal. In the appeal, the lower appellate Court framed the following issues:

“1-A. Whether Satpal Bali executed will dated

30.10.1989 registered on 6.5.1991 in favour of Raj Rani? OPD

1-B. Whether Raj Rani Executed a Will dated 23.8.1996 in favour of Madan Mohan? OPD

1-C. Whether the judgment and decree dated 18.4.1996 operate as resjudicata? OPD”

The lower appellate Court also directed the plaintiff to implead fourth brother, namely, Bhushan Lal as a defendant and the case was remanded.

After going through the judgment of the trial Court, it comes out that the Will dated 30.10.1989 as well as the Will dated 23.08.1996 were discussed and decided by the trial Court, even though, no specific issue was framed on the said point. Similarly, it was also held that the judgment dated 18.04.1996 does not operate as resjudicata.

It also comes out that both the parties were alive to the said issues. They led evidence on the said controversy. The trial Court has recorded the findings. Now, the question would arise “ whether on account non-framing of specific issue, is a ground to remand the case?”

I find the reply in negative.

When the parties are alive to the controversy and even though no specific issue is framed and they led the evidence on the said controversy and the same is discussed and decided by the trial Court on merits, the absence of the specific issue on the point is no ground to remand the case.

In the present case, it was claimed that Bhushan Lal, the fourth brother of the plaintiff, who is not traceable, was not impleaded as party. The plaintiff neither made him party nor at any stage moved any application under Order I, Rule 10 CPC, 1908 to implead him as party. Therefore, the

lower appellate Court could not direct the plaintiff to implead Bhushan Lal as one of the defendants without any request from any side and remand the case for denovo trial. The effect of not making Bhushan Lal as party, is to be seen by the lower appellate Court. There is no ground to remand the case. It being so, the impugned order is set aside and the case is remitted back to the lower appellate Court or its successor Court for re-hearing the appeal and deciding the same on merits.

Learned counsel for the appellant has relied upon the authority of Hon'ble the Supreme Court of India passed in Civil Appeal No.992-993 of 1997, titled as ***“REMCO Inds. Worker House Bldg Coop. Soc. Vs Lakshmeesha M. & Ors.”*** decided on 28.08.2003 and has pressed that the powers of the appellate Court are not inhibited by the acts or omissions of the parties.

There is no dispute regarding the said authority but considering the facts of the present case, there is no ground to remand the case, on which it was sought to be remanded. Thus, the present second appeal against order is allowed.

Since, the main appeal has been allowed, therefore, the pending application, if any, also stands disposed of.

Both the parties are directed to appear before the lower appellate Court, Hoshiarpur or its successor Court, on 18.07.2018 at 10.00 a.m.

May 25, 2018

sarita

Whether speaking / reasoned

Whether Reportable:

Yes

No

(KULDIP SINGH)
JUDGE