

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

**SAO No.18 of 2013 (O&M)
Date of Decision: November 26, 2018.**

Bajinder Singh

.....APPELLANT(s).

VERSUS

Nirmal Kumar and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rahul Rampal, Advocate
for the appellant (s).

Mr. K.S. Khehar, Advocate
for the respondents.

SURINDER GUPTA, J.

Plaintiffs Roop Lal, Basant Lal and Krishan Lal filed suit seeking possession of the suit property to the extent of their shares i.e. 1/7th each. During the pendency of suit, one of the plaintiff Basant Lal died and vide order dated 22.09.2003 (Annexure A-1), Bajinder Kumar-appellant was ordered to be impleaded as legal representative of Basant Lal. Suit was decreed by the lower Court and Kewal Kumar, one of the defendants filed appeal challenging the decree. He, however, did not implead either Basant Lal or Bajinder Kumar as his legal representative, impleaded vide order dated 22.09.2003, as party in the appeal. In the absence of Basant Lal or Bajinder Kumar being impleaded as party, learned first Appellate Court recorded finding that order dated 22.09.2003 was bad in the eyes of law as

the same has been passed by the trial Court without making inquiry as required under Order 22 Rule 5 CPC. On this sole ground, judgment of the lower Court was set aside and the case was remanded to decide the controversy regarding legal representative of Basant Lal and then decide the suit afresh.

I have heard learned counsel for the parties and perused the paper book with their assistance.

Learned counsel for the parties submits that in fact name of appellant is Bajinder Kumar and in the memo of parties it is wrongly mentioned as Bajinder Singh.

The dispute pertains to the property left by Hansraj. The plaintiffs have claimed separate possession of their share. The Court was to decide the share of plaintiffs Roop Lal, Basant Lal, Krishan Lal and also of defendants. The controversy regarding legal heirs of Basant Lal has nothing to do with the merits of the case as the Court was required to decide the share of Basant Lal and not of his legal representatives. The judgment passed by the first Appellate Court is not sustainable for the reason that firstly the Basant Lal was not impleaded as party and even the appellant was not impleaded being legal representative of Basant Lal.

On perusal of title of civil suit, first Appellate Court should have impressed upon the appellant before it to implead Basant Lal through his legal representative. Order dated 22.09.2003 passed in favour of appellant by the trial Court has been set aside without hearing him on merits. The order passed by the first Appellate Court, as such, suffers from legal infirmity on this score and is set aside. The case is remitted to first

Appellate Court with direction to decide the dispute between the parties afresh. The first Appellate Court will also determine the share of Basant Lal. Appellant Bajinder Kumar has been permitted to be arrayed as legal representative only to pursue the claim of Basant Lal. There is no dispute regarding any claim of appellant in his individual capacity. Any other legal heir of Basant Lal, if has any right in his estate, will have separate remedy to claim the same.

In view of above discussion, this appeal is partly accepted. Parties are directed to appear before the First Appellate Court/Successor Court on 12.12.2018. The Appellate Court will take up the appeal as per the above observations and decide the same afresh.

November 26, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***