

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

-.-

RSA 1237 of 2017 (O&M)
Date of decision: 29.01.2018

Gaitri Devi through LR

..... Appellant

Versus

Tara Chand and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. M K Dogra, Advocate
for the appellant

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Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts below whereby suit for partition by *metes and bounds* of house, detailed in head note of the plaint filed by Tara Chand-respondent No. 1 was decreed by the trial Court and preliminary decree passed by the trial Court was affirmed in appeal by the Additional District Judge, Gurdaspur.

The sole submission made by counsel for the appellant (since deceased) represented by her legal heirs is that as all the co-sharers of the suit house were not impleaded as defendants, suit for partition is liable to be dismissed on this score alone.

Tara Chand-respondent filed the suit in which 13 persons were arrayed as defendants. Gaitri Devi d/o Mulkah Raj (since deceased) was impleaded as defendant No. 1. Legal heirs of Gaitri Devi were brought on record before the trial Court. The trial Court has noticed that only Gaitri

Devi-defendant No. 1 filed the written statement contesting claim of the respondent/plaintiff. The averments raised in the written statement filed by Gaitri Devi have been taken note of in para 2 of the judgment passed by the trial Court. In para 3, it has been noticed that defendants No. 2 to 11 did not file the written statement and their defence was struck off vide order dated 03.03.2008 and defendant Nos. 12 and 13 were proceeded against ex-parte.

Counsel for the appellant has fairly conceded that only Santosh Devi defendant No. 2 appeared in the witness box to contest claim of the respondent/plaintiff. He has further informed that examination in chief of Santosh Devi by way of affidavit Ex. DW2/A was recorded prior to death of Gaitri Devi. He has not pointed out any materials on record that after impleadment of Santosh Devi as one of the legal heirs of Gaitri Devi, Santosh Devi examined herself as a witness on behalf of Gaitri Devi meaning thereby that Gaitri Devi did not adduce any evidence to substantiate her plea that the suit is bad for non-joinder of necessary parties i.e. other co-owners of the house in question. Conversely, Santosh Devi was not eligible to adduce evidence to contest claim of the respondent/plaintiff on merits or to substantiate any of the legal objections raised by Gaitri Devi. Under the circumstances, the appellant cannot derive any advantage to her contention from the facts elicited in the testimony of Santosh Devi. Once the appellant did not adduce any evidence to establish her plea of suit being bad for non-joinder of necessary parties, contention raised by counsel is not worthy of appreciation much less acceptance. In this view of the matter, plea raised by the appellant that suit filed by the respondent/plaintiff is liable to be dismissed for want of joinder of necessary parties is not meritorious and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

29.01.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No