

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

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RSA No.3734 of 2017 (O & M)
Date of Decision:06.07.2018

Rajinder Kumar and another

...Appellants

Versus

Manohar Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Gupta, Advocate
for the appellants.

ANIL KSHETARPAL, J.(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

A suit for partition of the joint property was instituted. Learned Court has passed a preliminary decree. Learned counsel for the appellants contends that Mulakh Raj, one of the son of Sant Ram, who had become co-sharer after the death of Sant Ram had died before filing of the suit and he was impleaded as defendant No.4 through his LR namely son of Sanjeev Kumar.

Learned counsel for the appellants submits that Sanjeev Kumar cannot be his legal heir because Sanjeev Kumar is son of Santosh Kumari, the widow of Mulakh Raj from previous marriage. He, hence submits that the suit was bad for non-joinder of parties. He has further submitted that Santosh Kumari and another daughter of Mulakh Raj are alive.

In the present case, only a preliminary decree has been passed

holding that co-sharers are entitled to 1/5th share. Mulakh Raj or his family members admittedly get 1/5th share as has been ordered by the Court. Had Mulakh Raj left behind Sanjeev Kumar or any one else as heir is left to be examined by the Court at the time of passing the final decree.

Still further, this argument was not raised before the learned First Appellate Court.

In such circumstances, while upholding the judgments passed by the Courts below liberty is granted to the parties to implead proper legal heirs of Mulakh Raj.

In view thereof, there is no ground to interfere.

Regular second appeal is dismissed.

All miscellaneous applications also stand disposed of.

06.07.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No