

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

SAO No. 66 of 2014 (O&M)
Date of Decision: December 10, 2018.

Jagiri LalAPPELLANT

VERSUS

Amarjit and othersRESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Narinder S. Lucky, Advocate
for the appellant.

Mr. Rajiv Joshi, Advocate
for the respondents.

SURINDER GUPTA, J.(Oral)

Heard.

The plaintiff/appellant Jagiri Lal filed suit for separate possession by way of partition of his 1/6th share in the property measuring 5 marlas owned by his father Sohan Lal in village Kot Sadiq. The suit was decreed by Civil Judge (Junior Division), Jalandhar. The defendants filed appeal and raised two issues, firstly, that lower Court had not recorded any finding on the maintainability of the suit without paying Court fee and secondly, that *Jamabandi* reveals that there are other co-sharers of the suit land, who were not arrayed as party.

Before the trial Court there were three specific issues framed as issues No.2, 7 and 10 as follows:

2. Whether the suit is maintainable? OPP

7. Whether the plaint is not properly verified as required under law? OPD

10. Whether the requisite court fee for the relief of separate possession has not been affixed? OPD

Issues No.7 and 10 were not pressed and decided against the defendant/respondent while finding on issue No.2 was recorded in favour of plaintiff/appellant.

Learned Ist Appellate Court while remanding the case has observed in para 12 of judgment as follows:-

12. *After hearing both the learned counsel for the parties this court is of the opinion that the learned lower court has not given any finding on the maintainability of the suit regarding court fee. The learned lower court has also ignored the fact that the co-sharers and legal heirs of Sohan Lal are joint owners alongwith others. The jamabandi reveals that the names of other co-sharers are not mentioned and the parties obtained copy of jamabandi without mentioning that it does not contain the names of other co-sharers in the joint Khata and the suit was bad for want of necessary parties. As such the judgment and decree is set aside and is remanded for fresh decision with specific direction that the court shall give an opportunity to the plaintiff to implead the other co-sharers in the joint khata and the court will also give specific findings on the maintainability of the suit without fixing of court fee.*

Learned counsel for the appellant has argued that dispute in this case pertains to the property measuring 5 marlas owned by Sohan Lal,

which is a constructed house. All the legal heirs of Sohan Lal were impleaded as party. The other co-sharers mentioned in the revenue record were neither required to be arrayed as defendants nor they have any interest in the relief claimed by the plaintiff. The learned trial Court has recorded findings on the maintainability of the suit and also on the issue of Court fee.

The suit pertains to the house constructed on 5 marla plot. It is nowhere the case of defendant/respondent that any legal heir of Sohan Lal has not been impleaded as party in suit. Even if it is proved from the record that any legal heir of Sohan has been left to be arrayed as party in this case, the Ist Appellate Court could pass appropriate order in that regard. The findings recorded by the trial Court on issue of maintainability of the suit and Court fee could be looked by the Ist Appellate Court at its own level, while deciding the appeal on merits and for this purpose, there was no need to remand the case.

In view of the above facts, this appeal is accepted and the order passed by the Ist Appellate Court is set aside. The Ist Appellate Court will take on board the file of Civil Appeal No.55350 of 2013 titled as **Amarjit and others Vs. Jagiri Lal** and decide the same on merits. Parties are directed to appear before the Ist Appellate Court on 16.01.2019.

December 10, 2018.

Jyoti-II

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No