

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

**SAO No. 101 of 2016 (O&M)
Date of Decision: March 25, 2019**

Meenakshi Mittal

.....APPELLANT

VERSUS

Gurpreet Singh and others

....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Karanveer Singh Khehar, Advocate
for the appellant.

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

SURINDER GUPTA, J.(Oral)

Heard.

This is appeal against the order dated 12.10.2016, whereby the Ist Appellate Court remanded the appeal filed by plaintiff/respondent No.1-Gurpreet Singh to the trial Court to decide the same afresh.

The dispute relates to the estate of Gian Kaur daughter of Bagga Singh. The plaintiff has propounded the Will of Gian Kaur dated 21.05.1991 and has claimed ½ share in the suit property with his father Surjit Singh. Learned trial Court while deciding issue No. 8 observed that the suit is bad for non-joinder of the necessary party as Surjit Kaur-daughter of Gian Kaur was not arrayed as party in the suit. Due to non-joinder of necessary party, the suit was also held as not maintainable.

In appeal, respondent No. 1 moved an application under Order 1 Rule 10 Code of Civil Procedure to implead Surjit Kaur as party, which was allowed and case was remanded to the trial Court for fresh decision.

Learned counsel for respondent No. 1 has argued that as per the Will of Gian Kaur, respondent No. 1 and his father Surjit Singh are owners of the suit property in equal shares. Surjit Kaur admits this fact and has also filed affidavit admitting the Will and shares of respondent No. 1 and his father in suit property, stating therein that she admits and accepts the registered Will dated 21.05.1991. A compromise to this effect was also placed on file of this appeal as Annexure C-1. She is also willing to appear before the Ist Appellate Court to make statement that she has not to contest the case and claim of the plaintiff based on the Will. He has no objection if the appeal is accepted and matter is remitted to the Ist Appellate Court with direction to decide the appeal on merits, as Surjit Kaur after being impleaded as party has not to contest the case and claim of plaintiff based on Will.

Learned counsel for the appellant has argued that an objection was raised before the trial Court by Improvement Trust Ludhiana that Surjit Kaur is a necessary party but respondent No. 1 did not implead her and the application to implead her as party before the Ist Appellate Court was not maintainable. He has, however, no objection if the Ist Appellate Court decide the appeal on merits.

Admittedly, the appellant has not raised the plea before the trial Court that Surjit Kaur is a necessary party in this suit. This plea was

raised by Ludhiana Improvement Trust, Ludhiana and learned trial Court while recording finding on issue No. 8 observed that Surjit Kaur is a necessary party and suit is not maintainable for non-joinder of necessary party.

In view of above findings of learned trial Court, the appellant moved application before the Ist Appellate Court to implead Surjit Kaur as party, which was allowed. Surjit Kaur is none else than the daughter of Gian Kaur, whose Will has been propounded by plaintiff/respondent No. 1. The Ist Appellate Court has rightly concluded that the matter in question cannot be decided without impleading her as party. The mere fact that she was not impleaded as party before the trial Court does not debar the plaintiff to implead her as party before the Ist Appellate Court. The application filed by respondent No.1 will also meet the objections raised by Improvement Trust, Ludhiana in this regard. The order of the Ist Appellate Court to this effect, as such, is upheld.

Keeping in view the fact that Surjit Kaur has come up with a compromise (Annexure C-1) and has also filed affidavit that she admits the Will dated 21.05.1991, I accept the submissions of learned counsel for the respondents and set aside the order of the Ist Appellate Court dated 12.10.2016 to the extent case was remanded to the trial Court. Surjit Kaur will be impleaded as party and summoned by the Ist Appellate Court and in case, she makes a statement admitting the Will and claim of plaintiff, the Ist Appellate Court will proceed further to decide the appeal on merits. However, if Surjit Kaur opts to contest the claim of plaintiff/respondent No. 1, the matter will again be sent back to

the trial Court for fresh decision on merits after taking written statement of Surjit Kaur and recording evidence afresh.

The compromise (Annexure C-1) which bears the original signatures be returned to respondent No. 1 for production before Ist Appellate Court by placing on file the photostat copy thereof.

Parties are directed to appear before the Ist Appellate Court on 22.04.2019, on which date, the Ist Appellate Court/Successor Court will take the file on Board and proceed to decide the same as per the observations above.

March 25, 2019
Jyoti-II.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No