

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 58 of 2018 (O&M)

Date of Decision: 06.05.2019

Satnam Singh

...Appellant

VERSUS

Suneet Tayal and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. P.S. Thiara, Advocate
for the appellant.

Mr. Vikas Bahl, Sr. Advocate with
Mr. Akshay Rawal, Advocate
for respondent no. 1.

Mr. Punit Jain, Advocate
for respondent no. 2.

SURINDER GUPTA, J. (Oral)

Heard.

In the suit filed by respondent no. 1-Dr. Suneet Tayal, Master Amandeep Singh and Ms. Osheen Singh were impleaded as party on their application under Order I Rule 10 CPC. Amended memo of parties was ordered to be filed by learned trial Court but the same appears to have not been filed. Thereafter, Master Amandeep Singh and Ms. Osheen Singh filed written statement, which was taken on record. However, while deciding the case, learned trial Court did not take note of written statement filed by them and observed that their written statement could not be taken on record as they were not impleaded as party.

Learned counsel for parties are *ad idem* on the issue that both Master Amandeep Singh and Ms. Osheen Singh were ordered to be impleaded as party and observation of learned trial Court ignoring their plea

taken in the written statement on the ground that they were not party to the suit is erroneous on the face of it.

Keeping in view above fact, learned Ist Appellate court remanded the case to learned trial Court with observations in para 16 as follows:-

“16. At the very outset it will be necessary to mention here that the finding of the ld. Trial Court with regard to issue No.3 i.e of maintainability are not in consonance with the record. The perusal of the file shows that the application for impleading defendants No.3 and 4 had been moved under Order 1 Rule 10 CPC and the same was allowed vide order dated 24.5.2013. Amended memo was ordered to be filed but the same was never filed. However, thereafter the written statement had also been filed by the defendants No.3 and 4. The ld. Trial court has also been aware of the written statement filed by defendant No.3 but has proceeded with the view that defendants No.3 and 4 have not been impleaded and hence while dealing with the written statement observed that their written statement cannot be considered as they have not been impleaded in the suit. The order dated 24.5.2013 shows that the application under Order 1 Rule 10 read with Section 151 CPC filed by the applicants Amandeep and Ms. Osheen was allowed and the time was granted for filing amended memo of parties. However, amended memo of parties was not filed. But it cannot be said that these applicants were not impleaded as party in the case. The perusal of zimni orders also reveals that the defendants No.3 and 4 have been marked present in the case and even in the impugned judgment and decree “Counsel for defendants No.3 and 4” is marked present. As these defendants No.3 and 4 were not mentioned in memo of parties in the

impugned judgment and decree they have not been impleaded in the appeal as well. In this way these defendants No.3 and 4 remains unrepresented in the appeal. The ld. Trial Court has over looked the record and committed material irregularity in the case. The suit had been originally filed by impleading Rajinder Ahluwalia and Satnam Singh as defendants and it is after the death of Rajinder Ahluwalia the L.Rs of Rajinder Ahluwalia were impleaded by moving an application dated 8.6.2011. Prior to this an application dated 18.8.2009 had been filed to implead the applicants/defendants No.3 and 4 as defendants which was allowed.”

As the plea taken by Master Amandeep Singh and Ms. Osheen Singh in their written statement was not considered while deciding the suit, Ist Appellate Court has committed no error while remanding the case and I find no reason to interfere with the observations of Ist Appellate court.

This appeal has no merit and the same is dismissed.

**(SURINDER GUPTA)
JUDGE**

May 06, 2019
jk

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

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