

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

**SAO No.109 of 2018 (O&M)
Date of Decision: April 29, 2019.**

Mewa Singh and another

.....APPELLANT(s).

VERSUS

Jagdish Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjay Verma, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

Jagdish Singh, plaintiff-respondent No.1 filed suit for possession by way of partition of his share in land as fully described in the head note of the plaint. Learned trial Court dismissed the suit on two grounds; firstly that the original sale deed was not produced, as such, the plaintiff could not claim any right on the basis of sale deed of his share in the suit land and secondly, the judgment and decree relied by plaintiff pertains to khasra No.101//31 and not to khasra Nos.101//31/1 and 101//31/2. Finding on issue No.3 that suit is bad for non-joinder of necessary parties was also recorded against the plaintiff.

The first Appellate Court accepted the appeal with the observations that plaintiff is recorded to be owner of 22/198 share of suit land as per mutation No.11225 entered on 25.11.2006. At that time, the

vendor of plaintiff was left with only 1 kanal 3 marlas of land and the share of plaintiff to this extent is protected. The subsequent sales made by the vendor of plaintiff during the pendency of the suit are hit by the principle of lis pendens. It was also observed that plaintiff has impleaded almost all the cosharers as per the entry in the jamabandi for the years 1999-2000, 2004-2005, as such, suit was not bad for non-joinder of necessary parties. With these observations, case was remanded with direction to the trial Court to determine the share of plaintiff in the suit property and after evaluating his share to pass the preliminary decree.

Learned counsel for the appellants has argued that the appellants are subsequent purchasers of the suit land from father of plaintiff. As the plaintiff has failed to prove his title over the suit land, order of the first Appellate Court remanding the case is bad in the eyes of law. The suit was also bad for non-joinder of necessary parties and this fact has not been looked into by first Appellate Court while remanding the case to the trial Court.

The trial Court dismissed the suit simply on the ground that plaintiff has failed to prove his title. The sale deed in favour of the plaintiff-respondent was not in question and was not a document under challenge. Copy of sale deed was produced only for the purpose of reference to determine the share of plaintiff in the suit property. The trial Court was also required to look into relevant revenue record placed on file in this regard. The first Appellate Court has rightly observed that it was a duty of the trial Court to first determine as to whether the plaintiff has any share in the suit property as per the sale deed relied upon by him. After recording such

finding, it was required to proceed further to decide the case of the plaintiff allowing or refusing him the relief as claimed. The trial Court instead dismissed the suit with the observation that plaintiff has failed to prove the sale deed in his favour, which was not a document in dispute, and that the suit is bad for non-joinder of necessary parties. The first Appellate Court on perusal of the revenue record observed that all the parties as per jamabandi 1999-2000 and 2004-2005 were impleaded in the suit, as such, the suit is not bad for non-joinder of necessary parties.

In view the above facts, I find no reason to interfere with the order passed by the first Appellate Court.

This appeal has no merits. Dismissed.

April 29, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No