

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

207

RSA-2548-2012 (O&M)

Date of decision: 07.02.2020

GITA & ANR

... Appellants

Versus

DILBAG RAI & ANR

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vivek K. Thakur, Advocate for the appellants.
Mr. PS Brar, Advocate for the respondents.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against decree and judgment dated 20.01.2012 passed by the Additional District Judge, Adhoc (Fast Track Court), Rupnagar whereby appeal against the judgment and decree dated 06.06.2011 passed by the trial Court partly allowing claim of the appellants-plaintiffs by declaring them to have lease hold rights in the suit property to the extent of 1/6th share has been accepted and suit filed by the appellants-plaintiffs was dismissed.

Perusal of the judgment of Court in appeal would reveal that the appellate Court has allowed the appeal primarily on the ground that lease deed purported to be executed in favour of Sh. Bhoja Ram by BBMB authority in respect of the suit property has not been produced on record and daughters of Bhoja Ram being class-I heirs of the deceased have not been impleaded as a party while reversing findings of the trial Court on issue No.4.

Counsel for the appellants would argue that the appellants are the widow and daughter of deceased Iqbal Rai one of the sons of Sh. Bhoja Ram whereas the other two sons namely Dilbag Rai and Dilshad Rai were impleaded as defendants in the suit. It is further submitted that trial Court decided issue No.4 with regard to non-impleading of necessary party namely Bimla Devi, Asha Rani and Dezi daughters of Bhoja Ram with the observations that they were proper parties and not necessary parties. It is further argued that even if the appellate Court was of the opinion that the aforesaid daughters of Bhoja Ram were necessary parties in the suit, the

Court on its own motion could implead them as a party in exercise of power under Order 1 Rule 10(2) of the Code of Civil Procedure. He would further submit that since the respondents-defendants did not dispute lease of suit property in favour of Bhoja Ram, the appellants-plaintiffs did not feel the necessity of producing the lease deed on record but they are ready to produce the same if an opportunity is allowed for the purpose. He would pray that decree and judgment passed by the appellate Court may be set aside and the matter be remitted to the appellate Court for decision of the appeal afresh after permitting the appellants to implead other class-I heirs of Bhoja Ram as a party and producing copy of lease deed from the records of BBMB Authorities.

Counsel for the respondents has got no objection.

In view of the above, the appeal is allowed. Decree and judgment passed by the first appellate Court is set aside and the matter is remitted to the appellate Court for decision of the appeal afresh. The appellants shall file a formal application for impleadment of daughters of deceased Bhoja Ram as a party and the same would be allowed by the Court. The appellants would also be at liberty to produce the lease deed by way of additional evidence. The respondents-defendants would be entitled to an opportunity to lead evidence in rebuttal, if any. Parties through their counsel are directed to appear before the appellate Court on 05.03.2020. The appellate Court shall dispose of the appeal within a period of six months of the parties putting in appearance and after securing presence of additional party.

07.02.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No