

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

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RSA-126-2023 (O&M)

Date of decision : 18.01.2023

Dalbara Singh and another

... Appellants

Versus

Amarjit Singh and another

.. Respondents

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. R.K. Shukla, Advocate for the appellants.

Anupinder Singh Grewal, J. (Oral)

The appellants have challenged the judgments of the Courts below whereby their suit for partition and permanent injunction has been dismissed.

Learned counsel for the appellants submits that the Courts below have not appreciated the entire evidence and the evidence led by the appellants has been misconstrued. Since no issue whether there were other co-owners had been framed by the Courts, the suit cannot be dismissed by holding that necessary parties were not impleaded. He also submits that he wants to go through the lower Courts records and therefore, the record be summoned as it would be necessary for proper adjudication of the matter.

Heard.

The appellants had filed a suit for partition and permanent injunction restraining the respondents/defendants from raising any kind of construction over the suit land. The suit had been dismissed by the trial Court by holding that other co-sharers who were necessary parties had not been impleaded and the finding had been affirmed by the Appellate Court.

The appellant/plaintiff-Dalbara Singh, in his cross-examination, had stated that his grandfather was the owner of the property in question. The grandfather had four sons, namely, Gurdev Singh, Hardev Singh, Gurnam Singh and Jora Singh and three daughters, namely, Gurdev Kaur, Bhinder Kaur and Jinder Kaur. Hardev Singh had expired and was survived by his six sons including Kesar Singh, Neula, Bodi, Joginder Singh and a daughter, namely, Binder Kaur. Gurnam Singh (his uncle) is alive. Jora Singh had also expired and is survived by a son. He, however, stated that he does not remember the number of sons of Jora Singh and the name of Jora Singh's daughter. He had further stated in his cross-examination that Gurdev Kaur and Jinder Kaur (his aunts) were alive while Bhinder Kaur had expired and he did not know her children.

PW-2- Gurnam Singh, had also submitted in his cross-examination that Jaimal Singh was the father of Gurdev Singh and all sons of Jaimal Singh had inherited the entire property in the natural manner including the suit property and that the sons of Gurdev Singh have further sons and daughters.

However, the appellants/plaintiffs had impleaded only two defendants, namely, Amarjit Singh s/o late Gurdev Singh and Amarjit Kaur d/o late Gurdev Singh while several others including aforementioned persons who had inherited the property had not been impleaded as parties to the suit.

It has been held by the Supreme Court in the case of **Kanakarathanammal versus V.S. Loganatha Mudaliar and another, AIR 1965 SC 271** that in a suit for possession of the property which would devolve by way of succession, all the co-owners have to be impleaded otherwise it would be liable to be dismissed on account of non-joinder of necessary parties.

In view of the above, I do not find any merit in this appeal which stands dismissed along with miscellaneous application.

January 18, 2023
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(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

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Yes/No