

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

**RSA-77-2011 (O&M)
Decided on:-07.07.2023**

Bhola and othersAppellants..
vs.

Smt. Om Pati and othersRespondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. V.D. Sharma, Advocate for the appellants.

Mr. Subhash Ahuja, Advocate for the respondents.

HARKESH MANUJA J. (Oral)

CM-14198-C-2012

Prayer in the present application is for impleading the legal heirs of respondent No.8.

For the reasons mentioned in the application which is duly supported by an affidavit, same is allowed and persons mentioned in para 3 of the application are ordered to be impleaded as legal representative of respondent No.8, for the purpose of pursuing the present appeal.

Notice of the application was issued on 07.12.2012, however, despite service, no one has chosen to appear on behalf of LRs of respondent No.8.

Amended memo of parties is taken on record.

CM stands disposed of.

Main case

1. By way of present regular second appeal, challenge has been made to the judgment dated 24.07.2010 passed by the court of learned

Additional District Judge, Jind, thereby, reversing the judgment and decree dated 03.11.2008 passed by the court of learned Additional Civil Judge (Senior Division), Narwana, resulting into decreeing the suit for partition filed by the respondents.

2. Briefly stated the facts are that the respondents filed a suit for partition as regards land measuring 5 kanal 11 marla comprising in khewat/khata No.536/745, Khasra No.501 within the revenue estate of village Danoda Khurd, Tehsil Narwana, claiming it to be joint property with appellants-defendants. In the written statement, one of the pleas taken by the appellants-defendants was that the properties among the parties stood partitioned, besides it, they also raised a plea that the suit in hand was liable to be dismissed being for partial partitioned as certain other *gair mumkin* properties/houses situated in village Danoda Khurd were not made part of the suit.

3. The trial Court vide judgment and decree dated 03.11.2008 dismissed the suit filed by the respondents/plaintiffs *inter alia* on the ground that the partial partition of the joint property was not permissible, although, the appellants and the respondents were not precluded from instituting fresh suit for partition in accordance with law by placing on record all the properties joint between them.

4. Aggrieved thereof, the respondents-plaintiffs filed first appeal and the same was allowed vide judgment and decree dated 24.07.2010, thereby, decreeing the suit. The appellate Court reversed the judgment passed by the trial Court primarily on the ground that there was no revenue record available on the file so as to substantiate the factum of other joint properties

owned by the parties.

5. I have heard learned counsel for the parties and gone through the paper book.

6. A perusal of paper book shows that in the counter claim filed by the appellants-defendants in their written statement specifically mentioned about the factum of other properties being jointly owned by the parties, besides it, even plaintiff No.4-Sant Ram while appearing as PW-1 in his cross-examination admitted the factum of few other properties being joint between the parties.

7. In view of the aforesaid, once the factum of other joint properties between the parties was part of the pleadings as well as the evidence available on record, the first appellate Court committed an error of law while ignoring the aforesaid pleadings & the evidence and decreeing the suit for partial partition.

8. In view of the discussion made herein above, the judgment and decree dated 24.07.2010, passed by the appellate Court is hereby set aside and the matter is remanded to the appellate Court to decide the matter afresh after hearing both the sides and by taking into consideration the entire pleadings as well as the evidence available on record. Considering the fact that the suit was filed in 2004, the first appellate Court is requested to do the needful within a period of six months from today.

9. All the pending application(s), if any, shall also stand disposed of.

07.07.2023
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No