

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

115

2023:PHHC:088989

**SAO-72-2018 (O&M)
Date of decision: 17.07.2023**

HARPAL SINGH AND ORS

..Appellants

Versus

DILBAGH SINGH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Arora, Advocate
for the appellants.

Mr. Sagar Aggarwal, Advocate
for respondent No.1.

Mr. Doli Sharma, Advocate
for Mr. Sandeep S. Majithia, Advocate
for respondent No.3.

ANIL KSHETARPAL, J(Oral)

1. The correctness of order of remand passed by the learned First Appellate Court is being challenged by filing the present appeal.

2. It has come on record that Sh. Sulakhan Singh sold the property to Sh. Dilbagh Singh and Sh. Sukhdev Singh. Subsequently, Sh. Sukhdev Singh sold the property by way of two sale deeds in favour of Sh. Amrik Singh, Sh. Gurdial Singh and Smt. Jagir Kaur. The plaintiffs-appellants (children of Sh. Sulakhan Singh) filed a suit for grant of decree of declaration that they are owners in possession of 19 kanal land and the mutation No.8809 is illegal. The suit was filed against Sh. Dilbagh Singh and Sh. Sukhdev Singh in the year 2010. In fact, Sh. Dilbagh Singh and Sh. Sukhdev Singh had already transferred the property before 2010. The trial Court decreed the suit. However, Smt. Jagir Kaur, one of the purchaser filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908, during the pendency of the appeal. The First Appellate Court on examining

the material has found out that the suit in question was filed without impleading the registered owners as parties to the suit. Moreover, Sh. Sulakhan Singh earlier filed a suit against Sh. Lal Chand and others, which was dismissed as withdrawn on 03.01.2000. Thus, the First Appellate Court has come to a conclusion that the registered owners have not been granted an opportunity to contest the suit. Hence, the First Appellate Court has set aside the decree passed by the trial Court while remitting the matter back to the trial Court for fresh decision.

3. The learned counsel representing the appellants contend that a separate suit filed by Smt. Jagir Kaur is pending. He submits that Smt. Jagir Kaur can establish her rights in the separate suit, which has already been filed.

4. This Court considered the submissions of the learned counsel representing the parties and perused the paperbook.

5. It is evident that the plaintiff while filing the suit did not implead the registered owners of the property as party defendants. Once this fact came to the notice of the First Appellate Court, on an application filed by Smt. Jagir Kaur, the impugned order remanding the case back to the trial Court has been passed. The plaintiffs pray for grant of decree of declaration that they are owners in possession. It would not be appropriate to decide such suit without giving opportunity to the registered owners to contest the same.

6. In view of the aforesaid facts, no ground to interfere is made out.

7. Dismissed.

8. All the pending miscellaneous applications, if any, are also disposed of.

July 17th, 2023

(ANIL KSHETARPAL)
JUDGE

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<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>