

209 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-18-2020 (O&M)
Date of decision :22.04.2024

Smt. Gurdial Kaur since deceased
through her legal heirs and another ...Appellants

Vs.

Dhanwant Singh through his
Special Attorney and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kuldep Saini, Advocate for
Mr. A.P. Kaushal, Advocate
for the appellants.

Mr. Baljinder Singh Sra, Advocate
for the Lrs of respondent No.1.

ANIL KSHETARPAL, J. (Oral)

1. This second appeal has been filed by the legal representatives of Smt. Gurdial Kaur and Smt. Subhadra Kumari, who were defendants No. 6 and 7 before the trial Court against the order passed by the First Appellate Court while remitting the case back to the trial Court for fresh decision.

2. The suit filed by Sh. Dhanwant Singh Bola for grant of decree of declaration was decreed on 21.12.2018. Against the aforesaid judgment and decree, the appellants filed an appeal, whereas, Sh. Anil Sharma filed the cross-objections. The First Appellate Court has remitted the matter back to the trial Court on the ground that all the legal representatives of defendant No.1-Ram Partap have not been impleaded

as parties.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

4. On the one hand, the learned counsel representing the appellants submits that the First Appellate Court has erred in remitting the matter back to the trial Court. On the other hand, the learned counsel representing the respondent No.1 (plaintiff) submits that he has no objection, if the impugned order passed by the First Appellate Court is set aside.

5. This Court has considered the submissions of the learned counsel representing the parties.

6. Sh. Ram Partap is stated to be the vendor of the plaintiff. He was represented by his son and three daughters before the trial Court. However, before the First Appellate Court, it came to the notice of the Court that Sh. Ram Partap had left behind three sons and four daughters.

7. In fact, the First Appellate Court has totally overlooked the fact that estate of Sh. Ram Partap was represented by his sons and daughters. The legal representatives are brought on record to permit them to prosecute or defend the suit. Moreover, Sh. Ram Partap has already sold the property in favour of the plaintiff. Before the First Appellate Court the legal representatives of Sh. Ram Partap were only the proforma respondents.

8. Furthermore, the First Appellate Court can remand the case back to the trial Court only after the requirements laid down under Order

41 Rule 23 and 23-A of the Code of Civil Procedure, 1908 are fulfilled.
In this case, the First Appellate Court has failed to advert to the aforesaid provisions.

9. Consequently, the impugned order passed by the First Appellate Court is set aside and the first appeal is restored to its original number. The parties through their learned counsel are directed to appear before the First Appellate Court on 24.05.2024.

10. The appeal is disposed of.

22.04.2024		(ANIL KSHETARPAL)	
neeraj	Whether speaking/reasoned :	Yes	No
	Whether Reportable :	Yes	No