

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

128

CR No.8630 of 2017
Date of Decision:29.01.2018

Balkar Singh and others

...Petitioners

Versus

Virsa Singh (since deceased) through LR's and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Chetan Bansal, Advocate
for the petitioners.

Mr. Akhilesh Vyas, Advocate
for LR's of respondent No.1.

ANIL KSHETARPAL, J.(Oral)

Petitioners are in the revision petition against the order dated 06.01.2017 as also order dated 16.05.2017 dismissing the application under Order 22 Rule 10 of the Code of Civil Procedure for substituting the applicants in place of plaintiff Nos.1 and 3. Applicants prayed to be substituted in place of plaintiff Nos.1 and 3 as rights in the property in dispute have been assigned in their favour by a transfer deed dated 24.08.2005.

Defendants opposed the application on the ground that such application was maintainable only in the learned trial Court and it could not be filed before the learned First Appellate Court.

Learned First Appellate Court, where appeal is pending, took a narrow view of the words 'pendency of suit' as appearing in Order 22 Rule 10 of the Code of Civil Procedure and dismissed the application.

Order 22 Rule 10 of the Code of Civil Procedure provides an

assignment, creation or devolution, to move an application and get an opportunity to be heard in the pending case. Provisions of Order 22 Rule 10 of the Code of Civil Procedure cannot be narrowly construed to restrict the operation of Order 22 Rule 10 of the Code of Civil Procedure only to the pending suit and not during the pendency of the first appeal. It is well established that the first appeal is re-hearing of the suit.

In view thereof, the impugned orders passed by the learned First Appellate Court are set aside. The petitioners are substituted in place of plaintiff Nos.1 and 3. The petitioners shall join the proceedings henceforth. The petitioners would not be entitled to file any pleadings or lead evidence. As the appeal is pending for the last more than 5 years. Therefore, the learned First Appellate Court is directed to dispose of the first appeal within one month from today.

The revision petition is allowed.

29.01.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No