

CR No.10283 of 2018(O&M)
Date of Decision: 21.08.2019

Versus

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Mr. H.K. Brinda, Advocate
for respondent No.1(iv).

RAJ MOHAN SINGH, J.(Oral)

[1]. At the very outset, learned counsel for the petitioners submitted that legal representatives of respondent 1(i) are already on record as after the demise of Haro widow of Bachna Ram, her LRs namely Prem Chand, Subhash Chand and Ramesh Kumar have succeeded to the estate of Haro and the aforesaid persons are already on record as legal representatives of deceased Bachna Ram. Respondent No.2 Amar Chand had died issueless and there was no legal representatives of Amar Chand to succeed his property. In view

of above, LR's of respondent Nos.1(i) and 2 are not required to be brought on record.

[2]. Petitioners have preferred this revision petition against the order dated 16.08.2018 passed by Additional District Judge, Rupnagar, whereby permission to withdraw the appeal was granted without granting liberty to file fresh one on the same cause of action.

[3]. Petitioners/decreed holders filed execution of judgment and decree dated 12.01.2017 passed by the trial Court in a suit for permanent injunction. Judgment and decree was upheld upto the High Court in RSA No.2042 of 2008. The executing Court while deciding the execution framed issues. Issue No.1 was in respect of maintainability of execution. Executing Court while deciding the issue No.1 held that decree in question was obtained by playing fraud upon the Court. Ultimately, the execution was dismissed vide order dated 19.09.2016.

[4]. Petitioners/decreed holders filed appeal against the order dated 19.09.2016 passed by the executing Court. Appeal was sought to be withdrawn due to wrong mentioning of provision. Permission to withdraw the appeal was granted, however liberty was not given to file fresh on the same cause of action.

[5]. Learned counsel for the petitioners relies upon **Lal**

Singh Vs. Ajit Singh and another, 2008(3) RCR (Civil) 650 to

contend that permission to file suit/appeal is an inbuilt mechanism. Once the withdrawal of the appeal is permitted, the Court would be under obligation to grant permission to file fresh appeal on the same cause of action.

[6]. Learned counsel for the respondents could not dispute the import of aforesaid precedent with reference to any case law to the contrary.

[7]. For the reasons recorded hereinabove, I deem it appropriate to set aside the impugned order to the extent of not granting permission to file fresh appeal on the same cause of action. Normal consequences to follow.

21.08.2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No