

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R.No.2099 of 2019 (O&M)

Date of Order: 23.08.2023

Harnek Singh and others

.Petitioners

Versus

Hardial Singh (deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Namit Gautam, Advocate
for the petitioners.

None for the respondents.

ANIL KSHETARPAL, J

1. Despite service of notice of the revision petition, the respondents have not entered appearance.

2. This is once again an unfortunate case where the rules of procedure are being given precedence over substantive justice.

3. In order to comprehend the dispute involved in the present case, some relevant facts, in brief, are required to be noticed.

4. In a civil suit, the judgment and decree was passed which was modified to certain extent by the First Appellate Court on 13.08.2004, on the basis of settlement between the parties. In order to execute the decree, the execution petition was filed in the First Appellate Court. Vide order dated 26.05.2017, the First Appellate Court sent the matter back to the court of Additional Civil Judge (Sr. Division), Samrala, with direction to appoint a Local Commissioner for getting the decree complied with.. The trial court was also directed to submit the compliance report. The court of the first instance sent the entire case file back to the First Appellate Court while

informing that there is a dispute between the parties with regard to location of the old drainage Mark-'A' and therefore, the wall cannot be constructed and there is an apprehension of quarrel at the spot. Thereafter, the First Appellate Court proceeded with the execution petition which is evident from the orders dated 16.12.2017 and 21.09.2018. An application for providing the police help was filed by the Decree Holder. The parties were permitted to lead evidence in support of their claims.

5. On 07.12.2018, the application for providing the police help to the Local Commissioner to get the wall constructed was allowed. However, on 19.01.2019, the First Appellate Court directed the decree holder to file a fresh execution petition before the court of first instance while refusing the permission to remit the file back to the Executing Court.

6. At the very first instance, the execution petition filed before the First Appellate Court was not maintainable because the execution petition is required to be filed in the court of first instance even if there is a modification of decree by the First Appellate Court. The doctrine of merger is applicable, therefore, the decree passed by the trial court will merge into the decree passed by the First Appellate Court.

7. Secondly, the First Appellate Court erred in proceeding with the matter. When the substantial progress has been made in the matter, the First Appellate Court has directed the decree holder to file the execution petition before the court of first instance. The First Appellate Court should have atleast remitted the file of the execution petition to the court of first instance to proceed further. The *de-novo* proceeding in the court of first instance would result in further delay of the matter.

8. Keeping in view the aforesaid facts, the impugned order passed

by the First Appellate Court on 19.01.2019 is set aside to the extent whereby the request of decree holder to remit the file of the execution petition back to the Executing Court has been declined. The First Appellate Court is requested to transmit the file of the execution petition forthwith to the Executing Court and the Executing Court is requested to proceed with the execution petition from the stage the matter was pending before the First Appellate Court.

9. Disposed of accordingly.
10. All the pending miscellaneous applications, if any, are also disposed of.

August 23, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Whether reportable

:YES/NO

:YES/NO