

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

202

RSA-2816-1995 (O&M)

Date of Decision: 01.12.2023

Dariya Singh

.... Appellant

Versus

Hoshiar Singh and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Mani Ram Verma, Advocate for the appellant.

None for respondent No. 1.

Respondent No. 2 already proceeded *ex parte*
vide order dated 09.05.1996.

NIDHI GUPTA, J. (ORAL)

This is the plaintiff/appellant's second appeal against the concurrent findings returned by the learned trial Court vide judgment and decree dated 28.10.1993, dismissing the 'suit for pre-emption' filed by the appellant herein. The Civil Appeal No. 165 of 1993 dated 11.12.1993 preferred by the appellant was also dismissed by the Ist Appellate Court, vide judgment and decree dated 09.08.1995.

As per office report dated 29.11.2023, the Clerk of learned counsel representing respondent No. 1 has been informed about the date fixed telephonically. It has further been reported that notice issued to respondent No. 1 for 09.05.2023 has been received back served through his son, which is a valid service. However, none has put in appearance on his behalf. Further, notice issued to the sole appellant has been

received back with the report 'died'.

Perusal of the file would reveal that on 09.05.2023 when this matter was listed for hearing, learned counsel for the appellant had sought time to implead the legal heirs of deceased-appellant.

Learned counsel for the appellant submits that prior to aforesaid date of hearing i.e. 09.05.2023, he had sent a registered letter on 02.02.2023 to the LRs of deceased-appellant. However, no response has been received from them, so far and as such, he has no fresh instructions in the matter.

In the aforesaid premise, issuance of fresh notice to the parties would be a futile exercise. It appears that due to sheer long pendency of the present second appeal before this Court for a period of more than 27 years, the LRs of the deceased-appellant have lost interest in pursuing the same, as no attempt has been made by them to contact their previous counsel or to engage new counsel, despite the fact that learned counsel for the appellant had sent a registered letter to them.

Be that as it may, in view of the foregoing circumstances, the instant regular second appeal is dismissed for non-prosecution, with liberty to the LRs of deceased/appellant, if any, to move an appropriate application within a period of 06 months from today for reviving the same, if so, advised.

Pending application(s), if any, also stand disposed of.

01.12.2023
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No