

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

(141)

**2024:PHHC:011605
ESA-22-2023(O&M)
Date of Decision: 29.01.2024**

Dalbir Singh @ Balbir Singh @ Bera

--Petitioner

Versus

Mohinder Singh (deceased) through
his LR & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present:- Mr. G.S. Sirphikhi, Advocate for the petitioner.

Mr. Dheeraj Mahajan, Advocate for the respondents.

ANIL KSHETARPAL.J (Oral)

1. This execution second appeal has been filed by Judgement Debtor No.4. He claims that his name was deleted from the array of parties by the Hon'ble Supreme Court vide order dated 22.07.2015 and therefore he is not bound by the judgement and decree which was passed by the Hon'ble Supreme Court on 28.03.2018 while allowing Mohinder Singh's appeal.

2. Relevant facts in brief are required to be noticed in order to understand the controversy involved in the present case.

3. Ujjagar Singh was the original owner of the suit property. He gifted the property in favour of Rura Singh. Mohinder Singh filed a suit challenging the aforesaid gift deed. In the aforesaid suit filed by Mohinder Singh compromise was arrived at. Rura Singh undertook to deliver the possession back to Mohinder Singh after the death of Ujjagar Singh. Ultimately, the statements of the parties were recorded and the suit was decreed on the basis of a compromise. Rura Singh or his heirs failed to honor the aforesaid decree. Mohinder Singh filed an execution petition

which was dismissed on the ground that this is only a declaratory decree and Mohinder Singh had to file a suit for possession. Thereafter, Mohinder Singh filed the present suit for grant of decree of possession in which as many as 11 heirs of Rura Singh were impleaded as defendants. The aforesaid suit was decreed on 20.05.2008. In first appeal the judgement and decree passed by the Trial Court was upheld. However, in second appeal the judgement and decree passed by the courts below was set aside resulting in dismissal of plaintiff's suit. Mohinder Singh filed Special Leave Petition (Civil No.24862-2012) which was ultimately allowed by a detailed judgement in ***Mohinder Singh (D) through Lrs Vs. Paramjit Singh & others, (2018) 5 SCC 698.***

4. As already noticed the appellant's claim was that his name was deleted from the array of parties at the risk of Mohinder Singh and therefore that decree is not binding on him. It will be noted here that appellant Dalbir Singh @ Balbir Singh @ Bera was defendant no.4 in the suit. Remaining defendants filed appeal after the suit was decreed by the Trial Court, however, the appellant did not file the appeal. The appellant also did not file the second appeal.

5. It is evident that the appellant is claiming property through Rura Singh. He has no independent right. Estate of Rura Singh was represented by as many as 10 defendants. Their defence was common with that of the appellant. Once the appellant has no independent right, the deletion of his name from the array of parties by the Hon'ble Supreme Court is required to be examined in that context particularly when he neither filed first appeal nor the second appeal.

6. In any case, Mohinder Singh is entitled to the property as

declared by the Hon'ble Supreme Court. The aforesaid decree has already been implemented as the possession has already been delivered.

7. Keeping in view the aforesaid facts, there is no ground to interfere in this second appeal and the same is, accordingly, dismissed.

(ANIL KSHETARPAL)
JUDGE

29.01.2024

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No