

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1571 of 2017

Raj Kumari Devi W/o Rameshwar Mahto, Resident of Mohalla- Masumganj,
P.S.- Bhagwan Bazar, P.O.- Bhagwan Bazar, District- Chapra, Saran.

... .. Petitioner/s

Versus

1. Surendra Bahelia @ Surendra Ram
2. Champa Kunwar, W/o Late Hira Bahelia.
3. Brajendra Bahelia, S/o Late Hira Bahelia.
4. Brijesh Bahelia, S/o Late Hira Bahelia.
5. Brij Nandan Bahelia, Late Hira Bahelia.
6. Dhan Ranjan Bahelia, S/o Late Hira Bahelia.
7. Raja Babu Kumar, S/o Late Hira Bahelia minor under guardian of mother Champa Kunwar.
8. Indu Devi, D/o Late Hira Bahelia.
9. Puja Kumari, D/o Late Hira Bahelia. Minor under guardian mother Champa Kunwar.
10. Prahalad Bahelia, S/o Ganesh Bahelia.
11. Mira Devi, D/o Late Naresh Bahelia.
12. Arun Bahelia, S/o Ram Bahelia.
13. Anil Bahelia, S/o Ram Bahelia.
14. Ravi Bahelia, S/o Ram Bahelia.
15. Shashi Kumar, S/o Ram Bahelia.
16. Shakuntala Devi, D/o Ram Bahelia,
17. Sumon Kumai.
18. Kushum Kumari
19. Prabhawati Devi, W/o Ganesh Baheli.
20. Chandrawati Devi, W/o Ganesh Baheli. All residents of Mohalla- Shyam Chok, P.S.- Bhagwan Bazar, District- Chapra, Saran.
21. Ram Loki Rai, S/o Late Jhalaku Rai.
22. Triloki Rai, S/o Late Jhalaku Rai.
23. Ishloki Rai, S/o Late Jhalaku Rai.
24. Vishva Mohan Rai, S/o Late Jhalaku Rai.
25. Radha Mohan Rai, S/o Late Jhalaku Rai.
26. Panbata Devi, @ Panmata Devi, W/o Late Jhalaku Rai.
27. Raj Muni Devi, D/o Late Jhalaku Rai.
28. Mukura Devi, D/o Late Jhalaku Rai. All 21-28 Resident of Village- Jantola, P.S.- Rifilganj, Chapra.



29. Babita Devi, W/o Jitendra Prasad, Resident of Village- Dharmapura, P.S.- Doriganj, District- Chapra, Saran.
30. Mangal Rai, S/o Later Jadu Rai @ Jai Rai, Resident of Village- Tarwan, P.S.- Kopa, District- Chapra, Saran. At present Masumganj, P.S.- Bhagwan Bazar, District- Chapra, Saran.

... .. Respondent/s

with
CIVIL MISCELLANEOUS JURISDICTION No. 1593 of 2017

Rita Devi W/o Suresh Prasad Yadav Resident of Mohalla- Shyam Chak @ Sri Ram Chak, P.S. Bhagwan Bazar, District- Saran.

... .. Petitioner/s

Versus

1. Surendra Bahelia @ Surendra Ram S/o late Timal Bahelia @ Timal Ram Resident of Mohalla- Shyam Chak @ Sri Ram Chak, P.S. Bhagwan Bazar, District- Saran.
2. Champa Kuer W/o late Hira Bahelia
3. Brajendra Bahelia S/o late Hira Bahelia
4. Brijesh Bahelia S/o late Hira Bahelia
5. Brajnandan Bahelia S/o late Hira Bahelia
6. Dhanraj Bahelia Minor Son of late Hira Bahelia
7. Raj Babu Kumar Minor Son of late Hira Bahelia Both under the guardianship of their Mother namely Champa Kuer.
8. Indu Devi D/o late Hira Bahelia
9. Pooja Kumari Minor D/o late Hira Bahelia under the guardianship of mother namely Champa Kuer.
10. Mira Devi D/o late Naresh Bahelia
11. Arun Bahelia S/o Rama Bahelia
12. Anil Bahelia S/o Rama Bahelia
13. Ravi Bahelia S/o Rama Bahelia
14. Shashi Kumar S/o Rama Bahelia
15. Shakuntala Devi D/o Rama Bahelia
16. Suman Kumari
17. Kushum Kumari Both Minor daughter of Rama Bahelia under the guardianships of Father Rama Bahelia
18. Prabhawati Devi D/o Ganesh Bahelia
19. Chandrawati Devi D/o late Ganesh Bahelia All are resident of Mohalla- Shyamchak, P.S. Bhagan Bazar, District-Saran.
20. Ramloki Rai S/o late Jhalku Rai
21. Triloki Rai S/o late Jhalku Rai



22. Ishloki Rai S/o late Jhalku Rai
23. Bishwamohan Rai S/o late Jhalku Rai
24. Radha Mohan Rai S/o late Jhalku Rai
25. Panmata Devi W/o late Jhalku Rai
26. Rajmuni Devi D/o late Jhalku Rai
27. Mukra Devi D/o late Jhalku Rai All are resident of Jantola, P.S. Rivilganj, District- Saran.
28. Babita Devi W/o Jitendra Prasad Resident of Dharampura, P.S. Doriganj, District- Saran.
29. Mangal Rai S/o late Jadu Rai @ Jai Rai Resident of Tarwa, P.S. Kopa, District Saran , at Present Masumganj, P.S. Bhagwan Bazar, District- Saran.
30. Rajkumari Devi W/o Rameshwar Mahto Resident of Village- Masumganj, P.S. Bhagwan Bazar, District- Saran.
31. Sapna Kumari Minor D/o late Prahalad Bahelia, under the guardianship of Prabhawati Devi(Fua), Resident of Mohalla- Shyam Chak P.S. Bhagwan Bazar, District- Saran.

... .. Respondent/s

with

CIVIL MISCELLANEOUS JURISDICTION No. 1941 of 2017

Mangal Rai S/o Late Jadu Rai @ Jai Rai, Resident of Tarwa, P.S.- Kopa, District- Saran, at present Masumganj, P.S.- Bhagwan Bazar, District- Saran.

... .. Petitioner/s

Versus

1. Surendra Bahelia @ Surendra Ram S/o Late Timal Bahelia @ Timal Ram, Resident of Mohalla- Shyam Chak, P.S.- Bhagwan Bazar, District- Chapra at Saran.
2. Champa Kuer, W/o Late Hira Bahelia
3. Brajendra Bahelia, S/o Late Hira Bahelia
4. Brijesh Bahelia, S/o Late Hira Bahelia
5. Brajnandan Bahelia, S/o Late Hira Bahelia
6. Dhanraj Bahelia, Minor son of Late Hira Bahelia
7. Raja Babu Kumar, Minor son of Late Hira Bahelia, Both under the guardianship of their mother namely Champa Kuer
8. Indu Devi, D/o Late Hira Bahelia
9. Pooja Kumar, Minor Daughter of Late Hira Bahelia, under the guardianship of their mother namely Champa Kuer
10. Mira Devi, D/o Late Naresh Bahelia
11. Arun Bahelia, S/o Rama Bahelia
12. Anil Bahelia, S/o Rama Bahelia



13. Ravi Bahelia, S/o Rama Bahelia
14. Shashi Kumar, S/o Rama Bahelia
15. Shakuntala Devi, D/o Rama Bahelia
16. Suman Kumari
17. Kushum Kumari, Both D/o Rama Bahelia, under the guardianship of father Rama Bahelia,
18. Prabhawati Devi, D/o Ganesh Bahelia
19. Chandrawati Devi, D/o Late Ganesh Bahelia, All are resident of Mohalla- Shyamchak, P.S.- Bhagan Bazar, District- Siwan.
20. Ramloki Rai, S/o Late Jhalku Rai
21. Triloki Rai, S/o Late Jhalku Rai
22. Ishloki Rai, S/o Late Jhalku Rai
23. Bishwamohan Rai, S/o Late Jhalku Rai
24. Radha Mohan Rai, S/o Late Jhalku Rai
25. Panmata Devi, W/o Late Jhalku Rai
26. Rajmuni Devi, D/o Late Jhalku Rai
27. Mukra Devi, D/o Late Jhalku Rai, All are resident of Jantola, P.S.- Rivilganj, District- Saran.
28. Babita Devi, W/o Jitendra Prasad, Resident of Dharampur, P.S.- Doriganj, District- Saran.
29. Rita Devi, W/o Suresh Prasad Yadav, Resident of Mohalla- Shyam Chak @ Sri Ram Chak, P.S.- Bhagwan Bazra, District- Saran.
30. Rajkumari Devi, W/o Rameshwar Mahto, Resident of Village- Masumganj, P.S.- Bhagwan Bazar, District- Saran.
31. Sapna Kumari, D/o Minor D/o Late Prahalad Bahelia, under the guardianship of Prabhawati Devi (Fua), Resident of Mohalla- Shyamchak, P.S.- Bhagan Bazar, District- Saran.

... ... Respondent/s

Appearance :

(In CIVIL MISCELLANEOUS JURISDICTION No. 1571 of 2017)

For the Petitioner/s : Mr. Basant Kumar Singh, Advocate
Mr. Vishesh Kumar Singh, Advocate

For the Respondent/s : Mr. Arun Kumar Rai, Advocate

(In CIVIL MISCELLANEOUS JURISDICTION No. 1593 of 2017)

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Advocate
Mr. Kumar Gaurav, Advocate

Mrs. Sheshadri Kumari, Advocate

For the Respondent/s : Mr. Arun Kumar Rai, Advocate

(In CIVIL MISCELLANEOUS JURISDICTION No. 1941 of 2017)

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Advocate
Mr. Kumar Gaurav, Advocate

Mrs. Sheshadri Kumari, Advocate

For the Respondent/s : Mr. Arun Kumar Rai, Advocate



CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 08-07-2025

These three matters are connected one and as such they have been heard together and are being disposed of by this common judgment.

02. The petitioners of Civil Misc. Nos. 1571 of 2017 and 1593 of 2017 are aggrieved by the order dated 05.08.2017 passed by the learned Sub Judge-IV, Chhapra in Execution Case No. 03 of 2013 whereby and whereunder the objection petition dated 07.01.2017 filed by petitioner-Raj Kumari Devi under Order 21 Rule 97 of the Code of Civil Procedure, 1908 (for short 'the Code') and the objection petition dated 26.09.2016 filed by petitioner-Rita Devi under Section 151 of the Code have been rejected.

03. The petitioner-Mangal Rai of Civil Misc. No. 1941 of 2017 has challenged the order dated 06.09.2017 passed by the learned Sub Judge-IV, Chhapra in Execution Case No. 03 of 2013 whereby and whereunder his objection petitions dated 14.12.2016 and 22.08.2017 filed under Section 151 of the Code has been rejected.

04. Background of the facts of the cases of the petitioners are that one Lalu Bahelia was the original owner of the suit property, who died leaving behind three sons namely,



Ganesh Bahelia, Naresh Bahelia and Timal Bahelia. Ganesh Bahelia had two sons, namely Hira Bahelia and Prahalad Bahelia and two daughters, namely Prabhawati and Chandrawati. Hira Bahelia, died leaving behind his widow, five sons and two daughters. The plaintiff/respondent no. 1, Surendra Bahelia @ Surendra Ram claiming himself to be the son of Timal Bahelia, filed a partition suit bearing No. 209 of 1994 before the court of learned Sub Judge, Chhapra against Ganesh Bahelia and his sons for partition of the suit land to the extent of 1/3rd share in the suit property. The said suit was dismissed vide judgment and decree dated 31.05.2007 and 13.06.2007, respectively. Being aggrieved by the judgment and decree of Partition Suit No. 209 of 1994, the plaintiff/respondent no. 1 filed Title Appeal No. 40 of 2007 and the said appeal was allowed vide judgment and decree dated 19.06.2009 and 24.06.2009, respectively, holding that the plaintiff was entitled to 1/3rd share in the suit land. Now, the petitioner-Raj Kumari Devi purchased 01 *kattha* 05 *dhur* of suit land from one Shanti Devi on 17.05.2004 through a registered sale deed and it further transpires that Shanti Devi had purchased the said land from one Panbata Devi, wife of Jhalaku Rai, on 24.05.1997. Jhalaku Rai was the defendant no. 5 in the original partition suit, who



subsequently died. On the other hand, petitioner-Rita Devi purchased the part of suit land from one Imdad Ali Khan, who had been sold the land by one of the original defendants, namely Hira Bahelia. Petitioner-Rita Devi purchased this land on 11.09.2007. In the same manner, petitioner-Mangal Rai purchased 1 *katha* 15 *dhurs* of suit land through different registered sale-deeds dated 24.10.1997 and 15.06.1999 from one of the defendants, namely Ganesh Bahelia, during the pendency of the appeal.

05. On the basis of judgment and decree dated 19.06.2009 and 24.06.2009 of the learned first appellate court, the plaintiff/respondent no. 1 filed Execution Case No. 03 of 2013 in which the petitioner-Rita Devi filed her objection under Order 21 Rule 97 of the Code whereas petitioners-Raj Kumari Devi and petitioner-Mangal Rai filed their respective objections under Section 151 of the Code, after receiving notice in Execution Case No. 03 of 2013. The learned trial court vide impugned order dated 05.08.2017 dismissed the objection petition of petitioners-Raj Kumari Devi and Rita Devi and also vide impugned order dated 06.09.2017 dismissed the objection petition of the petitioner-Mangal Rai. These impugned orders are under challenge before this Court.



06. Learned counsel appearing on behalf of the petitioners Rita Devi and Mangal Rai submitted that the decree is not executable and the same is nullity. Petitioner-Rita Devi was not aware about the pendency of the suit and for the first time, she came to know about the same at the stage of preparation of final decree. Thereafter, she filed an application with a prayer to add her as party, but the same has been rejected. However, petitioner-Mangal Rai has been made party at the stage of first appeal. Second Appeal filed by the petitioner-Mangal Rai was dismissed at the stage of admission itself vide order dated 02.05.2012 with observation that petitioner can make prayer in final decree proceeding to allot the purchased land in the share of his vendor. Learned counsel further submitted that though a direction has been passed in Title Appeal No. 40 of 2007 for preparation of preliminary decree, no such preliminary decree was prepared by the learned trial court as per direction of the first appellate court. But plaintiff filed an application for preparation of final decree on the basis of judgment and decree dated 31.05.2007 and 13.06.2007. Now the final decree has been prepared. But it is apparent from bare perusal of the decree that it was based on the decree passed by the learned Sub Judge-VII, Saran at Chapra dated 31.05.2007.



But there was no preliminary decree dated 31.05.2007, rather the partition suit was dismissed on 31.05.2007. On the basis of such final decree, the petitioner-Rita Devi has been added as a party in execution case for the first time showing that the decree has been executed against her and other persons. Thereafter, the petitioner-Rita Devi filed her objection under Order 21 Rule 97 of the Code, which was registered as Misc. Case No. 22 of 2013. The plaintiff/respondent no. 1 objected the institution of the miscellaneous case by filing objection petition dated 08.09.2015 under Order 21 Rule 102 of the Code stating therein that the said case was not maintainable since the petitioner-Rita Devi was a purchaser *pendente lite*. This objection was rejected by learned executing court vide order dated 06.01.2016 and rejection order was challenged by the plaintiff/respondent no. 1 in CWJC No. 2022 of 2016, which was heard and allowed by a learned Single Judge of this Court vide order dated 29.08.2016. Against the said order, the petitioner-Rita Devi filed review petition, which was disposed of with liberty to file a separate suit and consequently, the petitioner has filed Title Suit No. 174 of 2013. Learned counsel further submitted that apart from the fact that the final decree has been based on the judgment and decree of the learned trial court dated 31.05.2007 passed in



Partition Suit No. 209 of 1994, which is contrary to the fact as the original suit was dismissed. Further, Hira Bahelia died on 18.06.2008 and was substituted in the title appeal but in the final decree, he has been made a party in place of his legal heirs. The heirs/legal representatives of Hira Bahelia were not made parties in the final decree proceedings and it shows that no opportunity has been given to the petitioner-Rita Devi or heirs/legal representatives of her vendor by the learned Advocate Commissioner at the time of preparation of final decree. Learned counsel further submitted that petitioner-Rita Devi took these objections in her application before the learned trial court, the plaintiff/respondent no. 1 did not respond to these objections. Even other defendants namely, Bodha and Jhalaku also died and their heirs/legal representatives have not been made party. Therefore, the decree against dead persons is a nullity and as the petitioner-Rita Devi is the vendee claiming through one of the defendants who died during the pendency of final decree and was made party in final decree without substituting his heirs/legal representatives, the execution proceeding based on such final decree is illegal. But the learned trial court did not consider these facts and passed the orders and for this reason the impugned order dated 05.08.2017 is not



sustainable.

07. Learned counsel further submitted that though petitioner-Mangal Rai also filed objection like other petitioners in the year 2016, but his objection petition has not been considered by the learned executing court and as such, he again filed an application on 22.08.2017 for disposal of objection petition dated 14.12.2016 and finally, both the petitions of the petitioner-Mangal Rai were rejected vide impugned order dated 05.08.2017, on the ground that petitioner has raised objection with respect to preliminary decree and not with respect to final decree. Learned counsel further submitted that so far as objection of petitioner-Mangal Rai is concerned, the same is with respect to the final decree and not with respect to preliminary decree. Learned counsel further submitted that the learned executing court has failed to give his finding with respect to the specific objection regarding final decree which has been prepared on the basis of preliminary decree dated 31.05.2007 by which suit was not decreed rather the same was dismissed and thus, there is no determination of right of parties. Learned counsel further submitted that the learned executing court has also failed to give any finding regarding final decree which has been prepared against the dead persons. Thus, the



learned counsel submitted that the impugned order is bad in the eye of law and the same is liable to be set aside.

08. In support of his contention, learned counsel appearing on behalf of petitioners-Rita Devi and Mangal Rai placed reliance on the decision of a learned Single Judge of this Court in the case of *Arjun Mistry Vs. Rajendra Prasad Vishwakarma*, reported in **2004(2) PLJR 239** held in Paras-10 and 11 as under:

“10. The preliminary decree determines the rights of the parties and thereafter a final decree is prepared to carve out the shares of the parties in terms of the preliminary decree. There cannot be final decree unless there is a preliminary decree determining the rights of the parties. The preliminary decree dated 27.5.1978 on the basis of which final decree was prepared on 12.6.1980, has admittedly been set aside and no longer exists in the eye of law. In that view of the matter, there is no question of preparation of final decree and giving effect thereto by virtue of it being non-existent.

11. If the submission advanced on behalf of the learned counsel for the plaintiff/opposite party is accepted that the said decree is valid then there will be more difficulty in the plaintiff's way as admittedly that decree cannot be executed after 20 years. Admitted position is that a fresh preliminary decree has been prepared after setting aside the preliminary decree. In my view, the final decree has to be prepared on the basis of the preliminary decree dated 3.6.1992 and after preparation of the final decree, the same can be put into



execution. Accordingly, the objection raised by the defendant/petitioner about the maintainability of the execution case is valid one. The final decree dated 12.6.1980 cannot be put into execution. The Court below will take steps to prepare final decree in pursuance of preliminary decree dated 3.6.1992 and thereafter proceed in accordance with law.”

09. Learned counsel next relied on the decision of Hon’ble Supreme Court in the case of ***Surinder Pal Soni Vs. Sohan Lal (Dead) Thr. Lrs.***, reported in ***(2020) 15 SCC 771*** on the proposition of “doctrine of merger”.

10. Adopting the argument of learned counsel appearing on behalf of petitioners-Rita Devi and Mangal Rai, learned counsel for the petitioner-Raj Kumari Devi also contended that the impugned order dated 05.08.2017 has been passed in error of jurisdiction and needs interference by this Court. It has further been submitted on behalf of the petitioner-Raj Kumari Devi that the petitioner was not made party either in the partition suit or in the title appeal. Only when she received notice from the Court in Execution Case No. 03 of 2013, she came to know that she has been made a party in the execution case as opposite party no.2. The petitioner has purchased the said land paying the consideration amount and has constructed the double storied house on the said land. The plaintiff



intentionally did not make her party either in original suit or in the tile appeal. It has further been submitted that some of the defendants had died and the final decree was prepared against the dead defendants. Therefore, the decree is nullity and cannot be executed against the petitioner/judgment debtor.

11. Learned counsel appearing on behalf of the plaintiff/respondent no. 1 vehemently contended that there is no illegality or infirmity in the impugned order and the same is a proper and valid order passed after due consideration of the relevant facts and law. Learned counsel further submitted that Title Partition Suit No. 209 of 1974 was dismissed and decreed against the plaintiff/respondent no. 1. However, in Title Appeal No. 40 of 2007, the learned first appellate court set aside the judgment and decree of the learned trial court and allowed the appeal holding that the plaintiff/appellant was entitled for 1/3rd share in the suit land and ordered for preparation of preliminary decree. Thereafter, the decree of appellate court was prepared holding that the plaintiff was entitled to 1/3rd share in the suit land. In the decree in appeal, the heirs/legal representatives of Hira Bahelia were parties. Jhalaku Rai was also a party. Once, the decree in appellate stage has been prepared, there is no merit in the contention of learned counsels for the petitioners that no



preliminary decree was prepared as decree of the learned trial court merged with the decree of learned first appellate court. When the application was filed for preparation of final decree, the learned trial court took into consideration these facts and mentioning about allowing of title appeal in favour of plaintiff/respondent confirmed the report of Survey knowing Pleader Commissioner and ordered for preparation of final decree. Learned counsel further submitted that if it has been wrongly mentioned in the final decree that the final decree was prepared in view of the preliminary decree passed by the learned Sub Judge-VII, Saran at Chapra dated 31.05.2007, the same is only a typographical error and could be corrected by the learned trial court at any point of time. Similarly, not mentioning the names of the heirs/legal representatives of deceased-defendant-Hira Bahelia also appears to be a oversight on part of the concerned official who prepared the final decree and it is incumbent upon the court concerned to make necessary correction since the plaintiff/respondent no. 1 is not at fault. Learned counsel further submitted that a number of litigation has taken place between the parties and this Court in Second Appeal No. 201 of 2009 has affirmed the order of the learned first appellate court regarding 1/3rd share of the



plaintiff/respondent no.1. Learned counsel further submitted that earlier petitioner-Rita Devi came before this Court in Civil Misc. No. 523 of 2016 against the order of learned Sub Judge-IV, Chapra, when her petition filed under Order 21 Rule 9 of the Code was rejected. This Court dismissed the said civil miscellaneous petition. Now, in similar circumstances, the petitioner-Rita Devi and other petitioners have again approached this Court. The petitioners are *pendente lite* purchasers and they can only stake their claim against the share of their vendors and could have asked for allotment of their property in the share of their vendors, but they could not frustrate the execution proceeding initiated by the plaintiff/respondent no.1. But the petitioners by filing different applications and challenging the each and every orders of the learned executing court, have stalled the execution proceeding since the year 2013 and has deprived the plaintiff/respondent no. 1 from enjoying the fruit of the decree. Therefore, there is no merit in the petitions of the petitioners and the same be dismissed while affirming the impugned orders dated 05.08.2017 and 06.09.2017.

12. I have given my thoughtful consideration to the rival submission of the respective parties and perused the record.



13. Admittedly, Title Suit No.209 of 1974 was dismissed and decreed against the plaintiff/respondent no. 1. However, the learned first appellate court allowed the appeal and held that the plaintiff/appellant was entitled for 1/3rd share in the suit property and ordered for preparation of preliminary decree. Subsequently, decree was prepared by the appellate court on 24.06.2009. Now, challenge to the decree and consequential execution proceeding is on two grounds. Firstly, that the final decree mentions the proceeding before the trial court as its basis and secondly, the name of deceased-defendant/respondent, Hira Bahelia, finds mention in final decree and his heirs/legal representatives were not substituted in final decree proceeding. I am afraid, both the contentions raised by the petitioners would fail for the reasons discussed hereinafter.

14. When the first appellate court allowed the appeal and held that the plaintiff/appellant/respondent no. 1 was entitled for 1/3rd share and this finding was affirmed by this Court in a second appeal, doctrine of merger makes it very clear that the decree of learned trial court merged with the decree of learned first appellate court and it is the decree of the learned first appellate court on which further proceeding would take



place. Therefore, while preparing the final decree, the court concerned ought to have mentioned the decree of the first appellate court as its basis instead of mentioning the decree of learned trial court, the same being merged in the decree of the first appellate court. The said mistake would not go into the root of the matter. Therefore, the execution proceeding does not become unsustainable on this ground.

15. So far as contention of the petitioners about a dead person being made party under decree proceeding and his heirs/legal representatives are not being substituted in his place is concerned, the learned first appellate court has noticed the fact of death of Hira Bahelia in its judgment dated 19.06.2009 and also substituted the deceased respondent in its decree. It is unfortunate that while preparing the final decree, this fact was not taken note of by the concerned court, still, it remains merely a clerical error and would not make the decree nullity. Considering the nature of clerical error, it is required to be corrected by the learned trial court which prepared the said decree. Therefore, the execution proceeding does not become vitiated or nullity on the aforesaid two grounds and hence, the contentions raised by the petitioners are devoid of merit.

16. In the light of aforesaid discussion, the reliance



placed by the learned counsel appearing on behalf of petitioners-Rita Devi and Mangal Rai on the decision in the case of *Arjun Mistry (supra)* is clearly misconceived considering the different facts and circumstances of the cases. In the case of *Arjun Mistry (supra)*, the partition suit was initially allowed and preliminary decree was prepared. However, first appeal against the said preliminary decree was allowed and the matter was remanded to the learned trial court. The decision of learned first appellate court was challenged in the second appeal in which the order of the first appellate court was set aside and the matter was remanded to the learned trial court to dispose it of afresh. Thereafter, the learned trial court passed a fresh preliminary decree but the final decree was prepared on the basis of earlier decree and the civil revisions were allowed on this ground. Evidently, the same is not in the present civil miscellaneous petitions. Similarly, reliance placed by the learned counsel on the decision of *Surinder Pal Soni (supra)* is not of any help as the Hon'ble Supreme Court has clearly held that there cannot be more than one decree or operative orders governing the same subject-matter at the relevant point of time. As has been unequivocally held that once the Appellate Court renders its judgment, it is the decree of the Appellate Court



which becomes executable.

17. On the aforesaid principle, it is the decree of the first appellate court which would be the basis for the final decree and there being a decree of the first appellate court, no merit remains in the contention of the learned counsel for the petitioners that the final decree is based on some non-existent decree.

18. Thus, in the light of aforesaid facts and circumstances of the cases and discussion made here-in-before, I find no infirmity or error of jurisdiction in the impugned orders dated 05.08.2017 and 06.09.2017, respectively and hence, the same are hereby affirmed.

19. Accordingly, the present civil miscellaneous petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	17.06.2025
Uploading Date	08.07.2025
Transmission Date	NA

