

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

2025:PHHC:060841

**SAO-6-2012 (O&M)****Date of decision: 08.05.2025****RANJIT SINGH AND ORS****..Appellants****Versus****ASSI AND ORS****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Manoj Pundir, Advocate
Mr. Puneet Munjal, Advocate
for the appellants.

Mr. Ashok K. Khubbar, Advocate
for respondent No.2(a to f), 6, 7 and 8(a to d).

ANIL KSHETARPAL, J(Oral)

1. The defendants assail the correctness of First Appellate Court's order dismissing their appeal as abated on account of death of appellant No.12.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Smt. Assi and others filed a suit for possession against defendants No.1 to 12, which was decreed on 25.02.1982. Defendant No.1 to 12 jointly filed first appeal. During its pendency, appellant No.12 Smt. Gaindi died, however, no application to bring on record her legal representatives was filed resulting dismissal of the appeal on the ground that it has abated. As per Order XXII Rule 2 read with Order XXII Rule 11 of the Code of Civil Procedure, 1908 (in short 'CPC'), the defendants, who were appellants before the First Appellate Court shall be treated as the plaintiffs. Order XXII Rule 2 of the 'CPC' provides that where there are more



than one plaintiff and any of them dies but the right to sue survives to the surviving plaintiff or plaintiffs, the Court shall cause an entry to that effect in the record and proceed with the suit at the instance of surviving plaintiff or plaintiffs. In substance, if the right to sue survives to the surviving plaintiff or plaintiffs, there shall not be any abatement. Thus, the First Appellate Court erred in dismissing the appeal. Defendant No.1 to 11 were surviving appellants to whom the right to sue survived because any defendant is entitled to seek reversal of decree, which may have been passed against all the defendants. In such situation, the Court should have assumed that the appeal was filed only by defendant No.1 to 11. In fact, the First Appellate Court has overlooked the basic provision. Additionally, the Courts are expected to adopt a pragmatic approach while taking holistic view of the matter. The dismissal of the cases on technical defaults should not be resorted to unless the Court is left with no other choice.

4. Keeping in view the aforesaid discussion, the impugned order passed by the First Appellate Court on 29.05.1985 is set aside while restoring the first appeal to its original number.

5. The parties through their learned counsel are directed to appear before the First Appellate Court on 29.05.2025.

6. Disposed of.

7. All the pending miscellaneous applications, if any, are also disposed of.

May 08th, 2025

Ayub

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*