

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

ESA-10-2014 (O&M)

Date of decision : 24.4.2018

**Shiv Charan Gupta (since deceased)
through LR Pran Nath Gupta**

.....Appellant

Versus

Bhaiya Ram and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Navkesh Singh, Advocate for the appellant.

Mr. Ajay Ghangas, Advocate for the respondents.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

CM-9380-C-2017

Present application is for impleading the LR of the deceased-appellant/Shiv Charan Gupta on record. Learned counsel for the respondent has no objection if the said application is allowed and LR of deceased-appellant is brought on record.

For the reasons mentioned in the application, LR of deceased-appellant as mentioned in *para No. 2* of the application is brought on record.

Amended memo of parties is taken on record.

ESA-10-2014

Impugned in the present execution second appeal is the order dated 27.1.2011, passed by learned Additional District Judge, Panipat

affirming the order dated 14.10.2010, passed by learned Civil Judge (Senior Division), Panipat vide which the execution application filed by the plaintiff-appellant has been dismissed.

Heard.

It comes out that in a suit for mandatory injunction, learned Civil Judge (Senior Division), Panipat passed a decree on 16.2.2009, partly decreeing the suit with costs declaring that the wall between the houses is common and plaintiff is at liberty to put his lintel on this wall when raising construction on his plot on one side of the wall. Now the plaintiff has filed an execution under Order XXI Rule 11 of the Code of Civil Procedure 1908 before the Executing Court stating that judgment-debtors have raised cemented water tank on the 4.5" of the common wall on the share of decree holder and that they have also constructed 4.5" wide boundary wall on the common wall of the decree holder. Now the decree holder wants to raise construction on 9" wide and 60' long common central wall on the first floor of the house but this is not possible because of the water tank. His prayer is for removing the said water tank.

I am of the view that no decree was passed for removing the said water tank. In the main suit, no prayer was allowed that the water tank should be removed.

It being so, in the absence of decree, both the lower Courts below rightly held that the water tank cannot be ordered to be removed in the execution of the decree mentioned above.

In view of above, I do not find any illegality or infirmity in the order dated 27.1.2011, passed by learned Additional District Judge, Panipat affirming the order dated 14.10.2010, passed by learned Civil Judge (Senior Division), Panipat.

Dismissed.

Since the main petition is dismissed, the miscellaneous application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

24.4.2018

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Whether speaking / reasoned
Whether Reportable:

Yes
Yes