



ESA-52-2024(O&M)

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

ESA-52-2024(O&M)

Date of decision:09.07.2025

Sube Singh and others

..Appellants

Versus

Mahavir and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

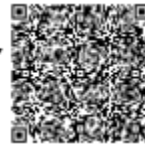
Present: Mr. Sandeep Kumar Yadav, Advocate for the appellants

Mr. Karan Kumar Goyal, Advocate
for Mr. Ravi Kumar, Advocate for respondent no.2

ANIL KSHETARPAL, J. (Oral)

1. The appellants (Lrs of decree-holder) assail the correctness of the concurrent orders passed by the Executing Court, which in appeal has been affirmed by the First Appellate Court. The predecessor of the appellants filed a suit for possession by way of partition, which was decreed on 19.03.1999. The predecessor of the appellants filed an execution petition, which was dismissed in default on 20.11.2006. Thereafter, the appellants filed an execution petition on 18.08.2012 to execute the decree dated 19.03.1999. The courts below while appreciating the facts came to the following findings:-

i) the Executing petition has been filed beyond the prescribed period of limitation i.e 12 years because the decree was passed on 19.03.1999, whereas the execution petition was filed on 18.08.2012.



ii) The judgment debtors claim that there was compromise between the parties and hence, the previous execution petition was not further pressed. This stand of the judgment debtors stands corroborated because the new execution petition was filed after a period of nearly 6 years from the date the first execution petition was dismissed in default. It is the case of the defendant that after the compromise, the defendant was permitted to construct the building.

iii) There is a demarcation of the property reflecting that now the judgment debtor is not in possession of any part of the property belonging to the decree-holder. Thus, the court has held that the decree has already been implemented.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. Learned counsel representing the appellants submits that the first execution petition was dismissed in default on 20.11.2006. Hence, the period of limitation will begin to run from that date. However, the learned counsel representing the appellants has failed to draw the attention of the Court to the relevant provision of the Limitation Act, 1963, which lays down that the period of limitation for filing of the execution petition of a decree would begin to run from the date the first execution petition was dismissed for non-prosecution. Similarly, there is a positive finding of the both the courts below to the effect that the parties had mutually settled the matter out of court and that is the reason why after dismissal in default



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of the first execution petition, fresh execution petition was not filed for a period of 6 years.

4. Moreover, there is a subsequent report of the revenue official, which proves that there is no encroachment on the part of the judgment debtor (respondent).

5. Keeping in view the aforesaid facts, no ground to interfere is made out.

6. Hence, dismissed.

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

(ANIL KSHETARPAL)
JUDGE

09.07.2025

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No