

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

112

ESA-72-2017 (O&M)  
Date of decision: 11.03.2025

**OMBIR & ANR**

..Appellants

**Versus**

**VIRENDER KUMAR (DECEASED) THROUGH LRS. & ORS**

..Respondents

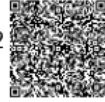
**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Parveen Moudgil, Advocate  
for the appellants.

Mr. R.N. Lohan, Advocate  
for respondent No.1(i) to 1(iv).

**ANIL KSHETARPAL, J(Oral)**

1. The judgment debtor assails the correctness of First Appellate Court's judgment, which in turn has reversed the order passed by the Executing Court. In fact, two suits were filed, one by Sh. Virender Kumar against Sh. Ombir & another and second was filed by his brother Sh. Shamsher Singh against Common Area Development Authority (in short 'CADA'). The suit filed by Sh. Virender Kumar and others was decreed on 13.11.2006 for delivery of possession of 2 kanal and 12 marlas land comprised in Rectangle No.30, Khasra No.24(1-14), 16(0-16), 15(0-2). The First Appellate Court has affirmed the decree of the trial Court, however, the suit filed by Sh. Shamsher Singh, brother of Sh. Virender Kumar was dismissed on 18.02.2008, which in appeal has been affirmed by the First



Appellate Court on 28.08.2009. Decree holder Sh. Virender Kumar filed execution petition. The judgment debtor filed objections claiming that he is not in possession and the property is being used for '*pucca*' water course constructed by 'CADA'. The Executing Court has found that the judgment debtor was not in possession of the property, hence, dismissed the execution petition. The First Appellate Court has held that the Executing Court cannot go behind the decree, hence, the appeal was accepted.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. In the opinion of this Court, the First Appellate Court has erred in failing to answer the following two important issues:-

- i. Whether the properties in both the suits are different or not?
- ii. Whether the judgment debtors Sh. Ombir and another are in possession of the same or the property is part of a '*pucca*' drain constructed by 'CADA'?

4. In absence of findings of these aspects, the First Appellate Court has erred in reversing the Executing Court's order. Hence, the same is set aside and the First Appellate Court is directed to decide the matter afresh.

5. It will be open to the Appellate Court to get the property demarcated and inspected from a revenue official before coming to conclusion as to 'whether the property is in possession of judgment debtors or not?'

6. With these observations, the appeal is allowed.

7. The parties through their learned counsel are directed to appear before the First Appellate Court on 04.04.2025.



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

**March 11<sup>th</sup>, 2025**

*Ayub*

**(ANIL KSHETARPAL)  
JUDGE**

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