

ESA-36-2019(O&M)

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

ESA-36-2019(O&M)

Date of decision:20.05.2025

Om Parkash and another

..Appellants

Versus

Roshan Lal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Yashvardhan Goyal, Advocate for
Mr. Akshay Kumar Jindal, Advocate for the appellants

Mr. Deepak Grover, Advocate for respondent no.1 and 2

ANIL KSHETARPAL, J. (Oral)

1. The suit filed by the appellants for the grant of decree of possession by way of mandatory injunction in respect of a booth was decreed on 28.11.2013. The respondents no.1 to 4 filed objections under Order XXI Rule 97 Code of Civil Procedure, 1908 before the Executing Court. which proceeded to cull out the following issues and permitted the parties to lead evidence:-

“1. Whether the present execution is liable to be dismissed? OPTPO

2. Whether the third party objections are not maintainable? OPDH

3. Relief.”

2. Ultimately, objection petition filed by respondent no.1 to 4 was dismissed. Objectors filed the appeal, which has been accepted



and the matter has been remitted back to the executing Court for fresh decision for the following reasons:-

i) the finding of the Executing Court is contradictory

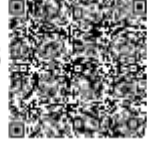
ii) the site plan Ex.P1 filed by the plaintiff with the suit is totally in contradiction with the site plan of the Local Commissioner.

3. This Court has considered the submissions made by the learned counsel representing the parties.

4. The proceedings for execution of the decree are pending for the last 11 years as the execution petition was filed in the year 2014. The Executing Court decided the objections after a prolonged trial of nearly 2 years. Subsequently, the First Appellate Court remitted the matter back to the Executing Court in the year 2019.

5. The enabling power of the First Appellate Court to remit the matter back to the lower court is required to be exercised only in rare and exceptional cases. In this case, third party objectors have been permitted to lead evidence and the decree-holder has also led counter evidence. If the trial court committed an error in failing to consider certain material evidence, the appellate court will consider the same. However, it cannot be made a ground to reverse the order passed by the Executing Court.

6. Moreover, if there is a contradiction in the site plans filed by the plaintiff and the Local Commissioner, the appellate court could take that into consideration. Hence, the order passed by the First Appellate Court is set aside while remitting the matter back to the First Appellate Court for fresh decision. The parties through their



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counsel are directed to appear before the First Appellate Court on 03.07.2025.

7. Disposed of.

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

(ANIL KSHETARPAL)
JUDGE

20.05.2025

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No