



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

SAO No.89 of 2018 (O&M)

Date of Order:21.02.2025

Chiranji Lal and others

..Appellants

Versus

Bhushan Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajan Bansal, Advocate, for the appellants.

Mr. Vikas Singh, Advocate, for respondent nos.1 to 5.

ANIL KSHETARPAL, JUDGE (Oral)

1. This appeal has been filed by the defendants to challenge the correctness of first appellate court's order remitting the matter back to the lower court.
2. The plaintiffs (respondents herein) filed a suit for declaration claiming to be owners of certain properties left behind by Sh. Kishan Chand. In substance, the dispute is with regard to inheritance of the properties left behind by Sh. Kishan Chand.
3. The plaintiffs as well as most of the defendants are successors in interest of Sh. Kishan Chand. The plaintiffs' suit was partly decreed by the trial court by an elaborate judgment. Two first appeals were filed, one by the plaintiffs and the second by the defendants. Before the First Appellate Court the plaintiffs filed an application for permission to lead additional evidence in order to produce the certified copies of two judgments passed in the years 2006 and 2014. The First Appellate Court after expressing certain doubts about the correctness of the trial court's findings, allowed the application under Order 41 Rule 27 CPC and remitted the matter back to the lower



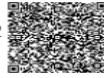
court.

4. The enabling power of the Appellate Court to remit the matter back to the lower Court is regulated and controlled by Order 41 Rule 23 and 23-A of the Code of Civil Procedure, 1908. While interpreting these provisions, the Hon'ble Supreme Court in **P.Purushottam Reddy and Another v. Pratap Steels Ltd. (2002) 2 SCC 686**, has laid down as under:--

“10. The next question to be examined is the legality and propriety of the order of remand made by the High Court. Prior to the insertion of Rule 23A in Order 41 of the Code of Civil Procedure by CPC Amendment Act 1976, there were only two provisions contemplating remand by a court of appeal in Order 41 of CPC. Rule 23 applies when the trial court disposes of the entire suit by recording its findings on a preliminary issue without deciding other issues and the finding on preliminary issue is reversed in appeal. Rule 25 applies when the appellate court notices an omission on the part of the trial court to frame or try any issue or to determine any question of fact which in the opinion of the appellate court was essential to the right decision of the suit upon the merits. However, the remand contemplated by Rule 25 is a limited remand in as much as the subordinate court can try only such issues as are referred to it for trial and having done so the evidence recorded together with findings and reasons therefore of the trial court, are



required to be returned to the appellate court. However, still it was a settled position of law before 1976 Amendment that the court, in an appropriate case could exercise its inherent jurisdiction under Section 151 of the CPC to order a remand if such a remand was considered pre-eminently necessary ex debito justitiae, though not covered by any specific provision of Order 11 of the CPC. In cases where additional evidence is required to be taken in the event of any one of the clause of Sub-rule (1) of Rule 27 being attracted such additional evidence oral or documentary, is allowed to be produced either before the appellate court itself or by directing any court subordinate to the appellate court to receive such evidence and send it to the appellate court. In 1976, Rule 23A has been inserted in Order 41 which provides for a remand by an appellate court hearing an appeal against a decree if (i) the trial court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in appeal and a retrial is considered necessary. On twin conditions being satisfied, the appellate court can exercise the same power of remand under Rule 23A as it is under Rule 23. After the amendment all the cases of wholesale remand are covered by Rule 23 and 23A. In view of the express provisions of these rules, the High Court cannot have



recourse to its inherent powers to make a remand because as held in Mahendra v. Sushila (AIR 1965 SC 365 at p.399), it is well settled that inherent powers can be availed of ex debito justitiae only in the absence of express provisions in the Code. It is only in exceptional cases where the court may now exercise the power of remand de hors the Rules 23 and 23A. To wit the superior court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20 Rule 3 or Order 11 Rule 31 of the CPC and hence it is no judgment in the eye of law, it may set aside the same and send the matter back for rewriting the judgment so as to protect valuable rights of the parties. An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23A or Rule 25 of the CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore must be avoided.”

5. As per Order 41 Rule 23A of the CPC, the appellate court can remit the matter back to the lower court only after setting aside the lower court's judgment on merits and on having formed an opinion that the re-trial of the case is necessary. In absence of these two findings, it is not permissible for the appellate court to remit the matter back to the trial court. In this case, the First Appellate Court has not recorded any such finding with respect to both the requirements. Undoubtedly, the appellate court has



power to permit the parties to lead additional evidence as well as cull out new/additional issues after the application is allowed or additional issues are culled out, the appellate court can call upon the parties to lead evidence or seek report from the trial court in this regard. However, this cannot be the only reason to remit the matter back to the lower court.

6. Keeping in view the aforesaid facts, the order passed by the First Appellate Court is set aside.

7. The learned counsel representing the appellant has submitted that the judgments passed in the years 2006 and 2014, are not relevant. This aspect shall be examined by the First Appellate Court while finally deciding the appeal.

8. The parties through their learned counsel are directed to appear before the First Appellate Court on 10.03.2025.

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

(ANIL KSHETARPAL)
JUDGE

February 21, 2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No