



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No.74 of 2014 (O&M)

Date of Order:07.02.2025

Yash Pal and another

.Appellants

Versus

Joga Ram and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashutosh Kaushik, Advocate
for the appellants.

Mr. Pritam Singh Saini, Advocate
Ms. Parul Panchal, Advocate
for the respondents.

ANIL KSHETARPAL, JUDGE (Oral)

1. This second appeal against the First Appellate Court's order remitting the matter back to the trial court has been filed by the defendants.
2. The plaintiff filed a suit for grant of decree of declaration to the effect that the sale deed dated 27.06.2005, executed by defendant no.1 in favour of defendants no.2 and 3 is illegal, null and void with consequential relief of possession and injunction which was dismissed by the trial court by an elaborate judgment. The First Appellate Court remitted the matter back to the trial court. On 17.11.2014, the following order was recorded by the Court:-

“Counsel for the appellants submits that the lower Appellate Court has erred in exercising its jurisdiction in remanding the case back to the trial Court for deciding the issue with regard to the fact as to whether the sale of the suit property was for legal necessity or not.



It is submitted that the property in dispute was sold by Mangal S/o Chiranji Lal on 27.06.2005 to the present appellants and his son Joga Ram has filed the present suit for declaration and permanent injunction in which he had claimed that the suit property was ancestral in the hands of his father Mangal and could not have been sold without any legal necessity. The trial Court dismissed the suit on the ground that the plaintiff has failed to prove the nature of the suit property being ancestral as there is no evidence led by the plaintiff that the suit property has come in the hands of Mangal from three generations. However, the lower Appellate Court has reversed the finding recorded by the trial Court on this issue on the ground that since Joga Ram is also an heir of Mangal, therefore, de hors the excerpt which proves the nature of the suit property to be ancestral, the suit property was found to be ancestral and then remanded the case back to decide the issue of legal necessity.

Notice of motion for 16.12.2014.

In the meantime, operation of the impugned order shall remain stayed.”

3. 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.”

4. It is evident that the First Appellate Court has erred in remitting the matter back to the trial court as the requirements laid down under Order 41 Rule 23 and 23 A have not been fulfilled.. The Appellate Court has neither set aside the reasons recorded by the trial court nor it has been found that the re-trial of the case is necessary.

5. Keeping in view of the aforesaid facts and discussion, the impugned order passed by the First Appellate Court is partly set aside while restoring the first appeal to its original number.



6. The First Appellate Court is directed to decide the appeal in accordance with law.

7. The parties through their learned counsel are directed to appear before the First Appellate Court on 06.03.2025.

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

(ANIL KSHETARPAL)
JUDGE

February 07, 2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No