



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No.103 of 2018(O&M)

Date of Order:24.03.2025

Baljinder Singh and another

.Appellants

Versus

Gurdev Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Ajaypal Singh Sandhu, Advocate
for the appellants.**

**Mr. L.S.Sidhu, Advocate
for respondent no.1.**

ANIL KSHETARPAL, JUDGE (Oral)

1. The plaintiffs have filed this second appeal against the First Appellate Court's order remitting the case back to the trial court for fresh decision after permitting the defendants to amend the plaint.

2. The plaintiffs filed a suit for grant of decree of declaration that they are owners in possession of 1 kanal and 5 marlas plot out of total land measuring 85 kanals 8 marlas on the basis of sale deed dated 18.05.2004, which was executed by defendant no.2, in their favour. They also sought declaration that the sale deed executed by defendant no.1, in favour of defendant no.2, on 07.12 2011, is more than the share of defendant no.1, hence not valid.

3. The suit was contested by the defendants. Ultimately the trial court partly decreed the plaintiffs' suit with the following observations:-

“13. In view of the aforesaid findings on issue no.1 to 3, suit of the plaintiffs is partly decreed in the manner that



the plaintiffs are held to be owners in possession of land measuring 15 Marlas bearing Khasra NO.13M//0/1/2(1-5) out of total land measuring 85 kanals 8 Marlas comprised in Khewat No.33, Khatauni No.220 to 228, Rect. No.13, Killa No.6/1(4-16), 6/2/1(2-4), 7/1(2-12), 7/2(5-8), 8(8-0), 6/2(1-0), 9/1/2(3-10), 3(7-13), 14(8-0), 5(8-0),9/1/1(3-10), Rect. No.14, killa No.1(7-12), 2(8-0), Rect. No.13, killa No.10/1(1-11), Rect. No.14, Killa No.10/2(6-12), 4(8-0), situated in the area of Village Peeru Wala, Tehsil and District Ferozepur, on the basis of sale deed dated 18.05.2004, executed by the defendant no.2, and registered on 20.05.2004 in favour of the plaintiffs and mutation no.1100 sanctioned by the revenue officer on the basis of said sale deed is held to be legal and valid one. Further the sale deed dated 07.12.2011 executed by the defendant no.1 in favour of the defendant no.2 of the land measuring 15 Marlas beign 15/50 share bearing khasra no.13M//9/1/2(2-10) being more than his share and mutation no.1116 sanctioned by the revenue official are held to be illegal, null and void and have no effect on the right of the plaintiffs. Further defendant no.2 is restrained from interfering into joint possession of the plaintiffs over the suit land along with other co-sharers in any manner. The parties are left to bear their own costs. Decree sheet be drawn accordingly. File be consigned to the record room.”

4. Defendant no.2, filed first appeal. During the pendency of the appeal, an application for amendment of the written statement was filed which was allowed. Merely on that basis, the First Appellate Court reversed the judgment and decree passed by the trial court while permitting the trial court to decide the matter afresh after framing new issues.



5. 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.”

6. 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 after forming 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 Appellate court has failed to fulfill both the parameters which are *sine qua non* for remitting the matter back.

7. This court is not interfering in the validity of the order passed



by the First Appellate Court permitting the defendants to amend the written statement, however, the First Appellate Court has the power to amend the issues and permit the parties to lead evidence.

8. Keeping in view the aforesaid facts, the order passed by the First Appellate Court is set aside only to the extent that it has remitted the matter back to the lower court. The first appeal is restored to its original number and the parties are directed to appear through their learned counsel before the First Appellate Court, on 24.04.2025.

9. The appeal stands disposed of accordingly.

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

(ANIL KSHETARPAL)
JUDGE

March 24, 2025

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