



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No.8 of 2023 (O&M)

Date of Order:08.05.2025

Resham Lal and others

.Appellants

Versus

Kewal Krishan and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Malkeet Singh, Advocate
for the appellants.

Mr. Munish Goel, Advocate
for respondent no.1

ANIL KSHETARPAL, JUDGE (Oral)

1. The defendants assail the correctness of the First Appellate Court's order remitting the matter back to the trial court for fresh decision.
2. In fact, the First Appellate Court in the first round remitted the matter back to the trial court on 05.04.2016. Thereafter, the trial court dismissed the plaintiff's suit but the First Appellate Court has again remitted the matter back to the trial court.
3. The plaintiff filed the suit for grant of decree of declaration that he is entitled to 1/5th share of the property left behind by Des Raj on the basis of registered Will dated 13.12.1996 and further for declaration that the Will dated 14.12.2003 is fabricated and not executed by Des Raj.
4. The defendants contested the suit. The suit qua defendant no.6 was dismissed under Order IX Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'). Ultimately, on merits also, the trial court dismissed the suit.



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 CPC. 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. The only reason for passing the impugned order is to the effect that proper issues have not been framed as directed by the appellate court in the first round.

7. As per Order 41 Rule 23A, the Appellate Court is required to set aside the findings arrived at by the trial court on merits and remit the matter back to the lower court only after coming to the conclusion that re-trial of the case is necessary. In absence thereof, it is not expected from the



appellate court to remit the matter back to the lower court.

8. Under Order 41 Rule 25 CPC, the appellate court is entitled to frame/modify the issues. The appellate court can seek report from the trial court on such additional/modified issues or call upon the parties to lead evidence. However, as laid down by the Supreme Court, it is not appropriate for the appellate court to remit the matter back only on the ground that proper issues were not framed.

9. After having heard the learned counsel representing the parties, it is evident that the First Appellate Court has committed an error in remitting the matter back to the trial court only after re-framing the issues. Neither the First Appellate Court has set aside the findings of the trial court on merits nor it has come to a conclusion that re-trial of the case is necessary.

10. Keeping in view the aforesaid facts, the order passed by the First Appellate Court is set aside while restoring the first appeal to its original number. The First Appellate Court shall proceed in accordance with law.

11. The appeal stands disposed of.

12. The parties through their learned counsel are directed to appear before the First Appellate Court, on 29.05.2025.

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

(ANIL KSHETARPAL)
JUDGE

May 08, 2025

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