



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

117

**SAO-64-2018 (O&M)  
Date of decision: 18.02.2025**

MANJEET AND ANR

..Appellants

**Versus**

MUKESH AND ORS

..Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Akshit Aggarwal, Advocate  
for the appellants.

Mr. Sanjiv Gupta, Advocate  
for respondents.

**ANIL KSHETARPAL, J(Oral)**

1. This is plaintiffs second appeal to challenge the First Appellate Court's order remitting the matter back to the trial Court for fresh decision after culling out the fresh issues and permitting the defendants to lead additional evidence.
2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
3. The appellants filed a suit for possession of the immovable property on the ground that they are owners of the same. The defendants contested the suit. The parties were permitted to lead evidence and thereafter, the Court decreed the suit vide detailed judgment dated 03.12.2015. The first appeal was filed by the defendants. During the pendency of the appeal, an application for additional evidence was also filed by the defendants. The Court the applications for additional evidence and found that the trial Court has failed to frame distinct and separate issue on the question of adverse



possession. Hence, the Court remitted the matter back to the trial court with the following observations:-

*“17. Thus, the application for framing of additional issue is allowed along with the application for leading additional evidence and the matter is remanded to the learned lower court for deciding the controversy afresh after framing of additional issues with respect to adverse possession and limitation and taking the evidence upon the same. Memo of costs be prepared. The parties are directed to appear before the learned lower court on 24.4.2018. Lower court record alongwith copy of judgment be sent to the trial court. Appeal file be consigned to record room after due compliance.”*

4. This Bench has heard the learned counsel for the parties and with their able assistance perused the paperbook.

5. The enabling power of the Appellate Court to remit the matter back to the lower Court is regulated by Order XLI Rule 23 and 23A of the Code of Civil Procedure, 1908, which has been explained by the Supreme Court in **P.Purushottam Reddy and Another v. Pratap Steels Ltd. (2002)**

**2 SCC 686** in the following manner:-

*“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 re-writing 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. It is evident that under Order XLI Rule 23 A of the CPC, the Appellate Court can remit the matter back to the lower Court only after setting aside the findings of fact arrived at by the trial Court and forming opinion that retrial of the case is necessary. The Appellate Court can permit



the parties to lead additional evidence and frame additional issues while calling upon either the parties to lead evidence or seek report from the trial Court.

7. Keeping in view the aforesaid facts, the impugned order passed by the First Appellate Court is set aside with the observation that the defendants shall be permitted to lead additional evidence. The Appellate Court may frame additional issues and permit the parties to lead evidence. The first appeal is restored to its original number.

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

9. With these observations, the appeal is disposed of.

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

**February 18<sup>th</sup>, 2025**

*Av*

**(ANIL KSHETARPAL)  
JUDGE**

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