



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No.30 of 2024(O&M)

Date of Order:21.04.2025

Guru Granth Sahib Loh Gurdwara Janamsthan Yadgaar Des Bhagat
Wasakha Singh Society Regd. Dadehar Sahib and another

.Appellants

Versus

Jotikiran Sandhu and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.S.Brar, Advocate
for the appellant.

Mr. B.S.Baath, Advocate
for respondent no.1.

ANIL KSHETARPAL, JUDGE (Oral)

1. The defendant assails the correctness of the First Appellate Court's order passed on 24.04.2024, while remitting the matter back to the trial court for fresh decision.

2. It is evident that the First Appellate Court has re-framed the following issues:-

1. *Whether plaintiff Jotikiran Sandhu is daughter of deceased Balwant Singh? OPP*
2. *Whether Sukhjinder Kaur Sandhu plaintiff was married to Balwant Singh if so on what date? OPP*
3. *Whether the property in the hands of Darshan Singh was a coparcenary property and Darshan Singh was karta of the coparcenary property and he was not competent to execute the sale deed beyond his share? OPP*
4. *Whether the plaintiffs are entitled to seek declaration? OPP*



5. *Whether the plaintiffs if co sharers are entitled to see declaration that execution of power of attorney dated 22.02.2014 and subsequently sale deed dated 14.03.2014 are illegal, null and void and without consideration and therefore, not binding upon the rights of other coparcenors? OPP*
 6. *Whether the plaintiffs are entitled to join possession to the extent of 1/4th share along with other co sharers in the suit land as mentioned in the head note of the plaint? OPP*
 7. *Whether Darshan Singh executed a sale deed in question through power of attorney in legal and bonafide necessity? OPD-4*
 8. *Whether defendant no. 2 and 3 attorned the execution of sale deed and admitted its execution and admissibility? OPD 1-5*
 9. *Whether defendant no. 5 is bonafide purchaser for valuable consideration without notice in the title of the property in case the property is held to be coparcenary property? OPD-5*
 10. *Whether the plaintiffs have no locus standi to file the present suit? OPD 1-5*
 11. *Whether the suit is not properly valued for the purpose of court fee and its jurisdiction? OPD*
 12. *Whether the suit is bad for non joinder and mis joinder of the necessary parties? OPD 13. Relief.”*
3. The plaintiffs filed civil suit for grant of decree of declaration that plaintiff no.2 and defendant nos.1, 2 and 3 constitute Joint Hindu Family and plaintiff no.2 is co-parcener. In substance, it was claimed that the property is ancestral coparcenary property. The suit was dismissed on 09.03.2023, after permitting the parties to lead evidence. An elaborate judgment was passed by the trial court.



4. The First Appellate Court neither set aside the judgment of the trial court on merits nor came to a conclusion that re-trial of the case is necessary.

5. Under Order 41 Rule 25 CPC, the Appellate Court has enabling power to frame issues and either refer the matter to the trial court for report or permit the parties to lead evidence. However, the First Appellate Court should be reluctant to remit the matter back to the trial court for fresh decision.

6. 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.”



7. 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.

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 23.05.2025.

9. The First Appellate Court shall proceed in accordance with law as per the issues which have been re-framed.

10. The appeal stands disposed of accordingly.

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

(ANIL KSHETARPAL)
JUDGE

April 21, 2025
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Whether speaking/reasoned : **Yes/No**
Whether reportable : **Yes/No**