

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

125

SAO-39-2022 (O&M)  
Date of decision: 01.04.2025

RATTAN SINGH

..Appellant

Versus

KULDEEP SINGH AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Kumar, Advocate  
Mr. Tushar Sharma, Advocate  
for the appellant.

Mr. A.S. Khinda, Advocate  
for respondent No.3.

**ANIL KSHETARPAL, J(Oral)**

1. The plaintiff assails the correctness of First Appellate Court's order remitting the matter back to the trial Court for fresh decision after framing additional issues.

2. The plaintiff filed a suit for grant of decree of declaration that he is owner in possession of 48 kanal land and the sale deeds dated 04.11.1992, 05.11.1992, 11.09.2003 and 03.09.2003 are illegal, null and void. The defendants contested the suit, which was decreed on 16.07.2018. The defendants filed the first appeal. The First Appellate Court found that the following two issues were required to be framed:-

*“Issue No.2A- Whether the plaintiff never issued power of attorney dated 8.04.1986 in favour of defendant no.1?  
OPP  
Issue No.2B- Whether defendant no.3 is bonafide purchaser of the suit land in good faith? OPD”*

3. Only on that basis, the First Appellate Court remitted the matter back to the trial Court.



4. 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:-

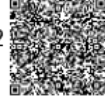
*“10. The next question to be examined is the legality and propriety of the order of remand made by the High Court. Prior to the insertion of Rule 23A in Order 41 of the Code of Civil Procedure by CPC Amendment Act 1976, there were only two provisions contemplating remand by a court of appeal in Order 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.”*

5. As per Order XLI Rule 23 A of Code of Civil Procedure, 1908, the Appellate Court can remit the matter back to the Lower Court only after setting aside the lower Court’s judgment on merit while forming an opinion that retrial of the case is necessary. The Appellate Court is required to fulfill both the conditions, which are *sine qua non* before remitting the matter back to the lower Court.

6. In this case, the First Appellate Court has neither set aside the judgment of the trial Court on merits nor formed opinion that retrial of the case is necessary. The First Appellate Court is the last Court of fact and law both. The First Appellate Court has power to permit the parties to lead evidence or it can seek report from the lower Court, however, Order XLI Rule 25 of the Code of Civil Procedure, 1908, does not provide that the First Appellate Court will remit the matter back to the trial Court only on this ground.



7. Consequently, the impugned order passed by the First Appellate Court is set aside to the extent that it remitted the matter back to the lower Court.

8. It shall be open to the First Appellate Court to either permit the parties to record evidence or direct the trial Court to send a report after permitting the parties to lead evidence.

9. With these observations, the appeal is allowed.

10. The impugned order passed by the First Appellate Court to that extent is set aside while restoring the first appeal to its original number.

11. The parties through their learned counsel are directed to appear before the First Appellate Court on 30.04.2025.

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

**April 01<sup>st</sup>, 2025**

*Ayub*

**(ANIL KSHETARPAL)  
JUDGE**

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