



**In the High Court of Punjab and Haryana, at Chandigarh**

**Second Appeal Order No. 5 of 2023 (O&M)**

**Date of Decision: 02.04.2025**

Gurnam Singh (Since Deceased) through his Legal Representatives

... Appellant(s)

Versus

Ujagar Singh (Since Deceased) through his Legal Representative and Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal.**

Present: Mr. Aman Bahri and Mr. Sachin Sharma, Advocates  
for the appellant(s).

Mr. K.R.Dhawan, Advocate  
for respondent No.1.

**Anil Kshetarpal, J.**

1. The legal representatives of the plaintiff assail the correctness of the First Appellate Court's order remitting the matter back to the Trial Court for fresh decision after setting aside the judgment and decree passed in favour of the plaintiff.

2. Plaintiff-Gurnam Singh filed a suit for partition against the defendants, namely Ujagar Singh, Raj Kaur and Amar Kaur. During the pendency of the suit, Ujagar Singh after filing the written statement in the suit died. His legal representatives were brought on record. They filed a separate written statement. The Trial Court decreed the plaintiff's suit. The defendant No.1-Ujagar Singh filed the first appeal. The First Appellate Court found that Surjit Singh, legal representative of defendant No.1-Ujagar Singh,

has been permitted to file the written statement who is taking altogether different stand from the stand taken by the defendant No.1 in his written statement. The First Appellate Court found that the legal representatives cannot take a stand different than the stand taken by their predecessor and only on this ground, the matter was remitted back to the Trial Court.

3. The learned counsel representing the appellant submits that the legal representative of Ujagar Singh can be permitted to take an independent stand.

4. This Court has considered the submissions of the learned counsel representing the appellant, however, does not find any merit therein.

5. It has been well settled that once the original defendant has filed a written statement, then his legal representative(s) cannot take a stand different than the stand taken by the original defendant. The legal representatives are brought on record only for the purpose of continuity of the proceedings. They cannot take a stand contrary/different to the one taken by the defendant.

6. However, the First Appellate Court has committed an error remitting the matter back to the Trial Court. The enabling power of the Appellate Court to remit the matter back to the Trial Court is regulated by Order XLI Rule 23A of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) 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.”*

7. Before remitting the matter back to the Trial Court, the First Appellate Court is required to set aside the impugned judgment on merits and remit the case back to the lower Court after coming to a conclusion that retrial of the case is necessary.

8. In this case, the First Appellate Court has neither set aside the judgment of the Trial Court on merits nor there is any finding to the effect that the retrial of the case is necessary. If the legal representative of Ujagar Singh has taken a stand which was different than that of Ujagar Singh, then the First Appellate Court could ignore the written statement filed by the legal representative of Ujagar Singh, however, it could not remit the matter back to the Trial Court.

9. Accordingly, the impugned judgment passed by the First Appellate Court remitting the matter to the Trial Court is set aside while upholding the observations made by the Appellate Court in para 16 thereof. In other words, the impugned order is set aside only to the limited extent whereby the First Appellate Court has remitted the matter back to the Trial Court.

10. With the observations made above, the present appeal is allowed while restoring the first appeal to its original number. The First Appellate Court is directed to proceed with the appeal, in accordance with law. The parties, through their learned counsel, are directed to appear before the First Appellate Court on 30.04.2025.

11. The miscellaneous application(s) pending, if any, shall stand disposed of.

**(Anil Kshetarpal)**  
**Judge**

**April 02, 2025**

**“DK”**

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No