

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 4162 of 2013
Date of Decision : 10.02.2015

Piara RamPetitioner

Versus

Bant Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

Present: Mr. Rajbir Singh, Advocate
for the petitioner.

Mr. Vivek Gupta, Advocate
for Mr. Jaswinder Singh, Advocate
for the respondent.

R.P. Nagrath, J. (Oral)

Suit for permanent injunction and recovery was filed by the respondent-plaintiff on the basis of an agreement dated 25.08.2003. The learned trial Court decreed the suit for recovery of an amount of ₹ 1 lac with interest and the defendant-petitioner was also restrained from alienating his property till entire amount under the decree is paid. Against the judgment and decree of the trial Court the petitioner-defendant has filed appeal which is pending before the Appellate Court.

Vide the impugned order, the learned Appellate Court has remanded the case to the trial Court for making a report with the following observations:-

“Heard. During the arguments, it appeared that despite the specific pleadings, the trial Court did not frame the issue regarding important plea taken by the defendant. In the interest of justice, to avoid an illegality

and chances of remand at any stage of proceedings and in the interest of justice, the following additional issue as issue no. 6-A is framed and recorded:-

6-A. Whether the agreement in question is result in misrepresentation as claimed? OPD

Consequent on framing of additional issue, the report is required to be called from the trial Court. Thus, by sending copy of this order as well as file of the trial Court, the trial Court is directed to submit its report on the issue so framed additionally. Case is adjourned to 17.07.2013, for awaiting report of the trial Court.”

I have heard learned counsel for the parties, perused the impugned order and also the paper-book.

Learned counsel for the petitioner submits that the case should have been remanded in whole and opportunity to lead evidence should have been given after framing of the additional issue.

Learned counsel for the respondent, however, submits that there was no application filed by the petitioner for leading additional evidence before the Appellate Court.

The powers of Appellate Court to remand the case are mainly contained from Rules 23 to 25 of Order XLI of the Code of Civil Procedure. Rule 23 of Order XLI CPC reads as under:-

“23 . Remand of case by Appellate Court — Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the

case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.”

Rule 23-A of Order XLI of the Code is also not attracted as it is applicable when the decree of the trial Court is reversed in appeal and a re-trial is considered necessary.

Under Rule 25 of Order XLI CPC, the Appellate Court if comes to the opinion that the trial Court has omitted to frame or try any issue, or to determine any question of fact, that issues can be settled and matter can be remanded to the trial Court with a direction to the parties to lead additional evidence. The Appellate Court has neither proceeded under the aforesaid rule. So the only rule basically attracted is Rule 24 of Order XLI CPC, which says as under:-

“24. Where evidence on record sufficient, Appellate Court may determine case finally –
Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the court from whose decree the

appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.”

In view of the above, the impugned order passed by the Appellate Court cannot be sustained and the same is set aside and the Appellate Court is directed to proceed further to decide the appeal in accordance with law and also to give finding on the additional issue on the basis of evidence already available or would be at liberty to proceed under any of the specific rule of Order XLI CPC relating to remand, if so required. The parties are directed to appear before the Appellate Court on 09.03.2015.

The instant petition is disposed of with the aforesaid directions and observations. Copy of the order be **faxed** to the lower Court.

February 10, 2015
jk

(R.P. NAGRATH)
JUDGE