

In the High Court of Punjab and Haryana at Chandigarh.

**SA O No. 16 of 2012
Decided on 16.1.2015**

Gurnek Singh and another

--Appellants

Vs.

Babu Ram

--Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. Gorakh Nath, Advocate, for the appellant

Mr. Gaurav Jain, Advocate, for the respondent

Rakesh Kumar Jain,J: (Oral)

The plaintiffs are in appeal against the order of the Appellate Court by which he has set aside the judgment and decree of the trial Court and remanded the case back to the trial Court on the ground that it did not consider the revenue record available on record.

The plaintiffs/appellants filed suit for declaration that they are owners in possession of the property in dispute on the basis of sale deed dated 06.5.1998. The suit was decreed on 23.3.2009 and the defendant was restrained from interfering into the peaceful possession of the plaintiffs and the counter claim filed by the defendant was dismissed.

Aggrieved against the judgment and decree of the trial Court, the defendant filed the appeal in which the Appellate Court has passed the impugned order observing that the trial Court has failed to consider the entries in the revenue record, thus, remanded the case back to the trial

Court after setting aside the judgment and decree and to pass a fresh order after considering the revenue record.

Learned counsel for the appellants has submitted that the Appellate Court has committed a patent error in exercise of its jurisdiction, firstly, setting aside the judgment and decree of the trial Court on the other issues without recording finding on merits and secondly, the Appellate Court should have considered the evidence and then decided the appeal itself instead of remanding the case back to the trial Court.

Learned counsel for the respondent has argued that as per Order 41 Rule 23-A of the CPC, the Appellate Court has ample power to remand the case after hearing the parties and examining the record.

I have heard learned counsel for the parties.

There is an apparent error on the part of the Appellate Court in remanding the case back to the trial Court to consider the evidence available on record and to pass a fresh order. It was the duty of the Appellate Court to consider that evidence as the Appellate Court is the Court of fact who has to re-appreciate the entire evidence available on record if it is not considered by the trial Court.

In view thereof, the present appeal is allowed. The impugned order is set aside and the Appellate Court is directed to decide the appeal itself after considering the entire evidence available on record.

The parties are directed to appear before the Appellate Court on 27.3.2015.

16.1.2015
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(Rakesh Kumar Jain)
Judge