

SAO No.23 of 2013 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**SAO No.23 of 2013 (O&M)
Date of decision:24.02.2015**

Raj Rani and others ...Appellants

Versus

Prem Lata and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Puneet Jindal, Senior Advocate, with
Mr. Parambir Singh, Advocate, for the petitioners.

Mr. Sandeep Arora, Advocate,
for respondents no.1 to 5.

Mr. H.K.Aurora, Advocate,
for respondents no.6 to 9.

Rakesh Kumar Jain, J.

The appellants filed a suit for declaration that they are the owners of the land measuring 8 kanal 14 marlas and for correction of the entry in the column of ownership of the jamabandi for the years 1970-71 and also in the subsequent jamabandi showing defendants no.1 to 3, namely, Telu Ram, Shiv Dutt and Krishan Dutt as co-sharers, whereas they had already sold their share. Defendant no.1 Telu Ram appeared in the suit and filed written statement admitting the claim of the plaintiffs but defendants no.2 and 3 contested the suit. The appellants also filed application for temporary injunction which was dismissed by the trial Court and while

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appeal against that order was pending, defendant no.1 Telu Ram died on 23.08.2004 and his widow Ram Piari and son Anil Kumar were impleaded in the said miscellaneous appeal. Allegedly, legal heirs of Telu Ram were served in the Civil Miscellaneous appeal No.15 of 2006 but they did not appear and the miscellaneous appeal was allowed restraining the defendants from alienating the suit property. The suit was decreed on 20.11.2009 which was challenged in appeal by defendants no.2 and 3. During the pendency of the appeal, both Ram Piari widow and Anil Kumar son of Telu Ram died. Thereafter, Neelam widow of Anil Kumar filed an application before the lower Appellate Court to amend the written statement already filed on behalf of Telu Ram and the admission made by Telu Ram was sought to be withdrawn. The application was dismissed by the lower Appellate Court on 04.11.2011. The said order was challenged by Neelam etc. by way of Civil Revision No.597 of 2012 and by the legal heirs of Shiv Dutt and Krishan Dutt by filing Civil Revision No.400 of 2012. Civil Revision No.400 of 2012 filed at the instance of legal heirs of Shiv Dutt and Krishan Dutt was dismissed but Civil Revision No.597 of 2012 filed by Neelam etc. was allowed by this Court on 28.01.2013. The lower Appellate Court, vide its impugned order dated 05.04.2013, held that the case requires *de novo* trial with the amended written statement to be filed by Neelam etc.

Aggrieved against that order, the present appeal has been filed.

Learned counsel for the appellants has vehemently argued that the lower Appellate Court has misinterpreted the order of the High Court passed in Civil Revision No.597 of 2012, as a limited right was given to

record the evidence of the parties while remanding the case, after framing the additional issues. It is also submitted that instead of setting aside the judgment and decree of the trial Court, the lower Appellate Court should have framed the additional issue and directed the trial Court to record evidence. In this regard, he has relied upon a decision of this Court in the case of **Mohan Singh and another v. Amarjit Kaur @ Amarjit and others**, 2009(1) ICC 830 and a judgment of the Supreme Court in the case of **Smt. Bachahan Devi and another v. Nagar Nigam, Gorakhpur and another**, 2008(2) R.C.R. (Civil) 367 to contend that the lower Appellate Court should have recorded evidence and decided the case after framing additional issues.

On the other hand, learned counsel for the respondents has argued that the true import of the order of this Court passed in CR No.597 of 2012 is the remand of the case to the trial Court because once the legal heirs of Telu Ram have been allowed to file the amended written statement, the issues are to be framed accordingly and the parties are to be allowed to lead evidence. In support of his submission, he has relied upon a decision of the Supreme Court in the case of **Jegannathan v. Raju Sigamani and another**, 2012(3) R.C.R. (Civil) 233.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The trial Court had decreed the suit of the plaintiffs declaring them to be the owners of the property as per mutation no.3293 but it was made clear that the defendants had sold their entire share to Sunder Singh to

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the extent of 4 kanal 16 marlas, whereas the remaining land was presumed to be sold from the share of the plaintiffs because Sunder Singh purchased the property to the extent of 7 kanal 2 marlas and since the specific khasra number was sold by the parties, therefore, the plaintiffs were declared owners regarding the remaining land and as they were declared the owners, they were also held entitled to possession of the suit property.

In Civil Revision No.597 of 2012, filed at the instance of Neelam widow of Anil Kumar and others, this Court has held as under:-

“..... In this case, the legal representatives have come to Court seeking for amendment of the plaint by pointing out to me that they were not before the trial Court when the decree was passed against Telu Ram. That right cannot be lost by clever machination of the plaintiff. It has to be still tested whether Telu Ram's representatives are trying to bring out truth or they are stating matters which are false. It cannot be presaged by a Court without allowing for such opportunity to legal representatives to bring the amended written statement and at best the plaintiff shall have only a right to file a rejoinder and seek for a contest on facts. If the amendment to the written statement would require attendance of witnesses and the correctness of the statement said to have been filed by Telu Ram to be tested by oral evidence, the same shall be done and it will be decided by the Appellate

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Court whether such opportunity must be given for oral evidence or not, if need be, to remand the appeal to trial court for allowing for additional evidence. I am not prepared to take a view and foreclose a right of hearing on such a contention that could be brought by the parties.

3. The impugned order rejecting a plea for amendment brought at the instance of the legal representatives of Telu Ram was unjustified and wholly erroneous. It is set aside and the revision petition filed by the legal representatives of Telu Ram, who are the petitioners before the Court is allowed.”

The lower Appellate Court passed the following order while remanding the case to the trial Court:-

“9. On hearing learned counsel for the parties and from perusal of record, the position that emerges before this Court in this appeal is that legal representatives of Telu Ram since deceased have been allowed to agitate their plea with regard to exercise of fraud on Telu Ram in obtaining his blank documents and thereby wangling the alleged partition from him in a fraudulent manner. The case does not fall under order 41 Rule 25 of Code of Civil Procedure because now it is not a case where trial court has omitted to frame a specific issue from the

pleadings of parties or try any issue, or to determine any question of fact, which appears to the appellate court essential to the right decision of the case. The case would require denovo trial only with this amendment which was allowed by the Hon'ble High Court to legal heirs of Telu Ram since deceased in this case in revision petition no.597 of 2012. This court finds that wherever subsequent events of facts or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur and no trial thereon was held, the matter can be remanded to trial court where further oral evidence or documentary evidence thereupon is required. In the circumstances of the case, this court finds that judgment and decree under appeal of the court below are liable to be set aside and case is liable to be remanded to the trial court for permitting the legal heirs of Telu Ram defendant to file the amended written statement and the plaintiffs to file amended replication thereto and then to frame necessary issues arising thereupon and then to take evidence of both the parties thereon in accordance with law. The trial court shall decide the case on the basis of amended pleadings of the parties as per order of Hon'ble High Court in civil revision no.597 of 2012 decided on

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28.01.2013, after giving due opportunities to the parties to lead evidence in affirmative and in rebuttal thereof. The denovo trial is considered necessary under Order 41 Rule 23-A of Code of Civil Procedure by this court in view of the subsequent effect of amendment allowed to legal representatives of Telu Ram since deceased by the Hon'ble High Court. This court by setting aside the judgment and decree dated 20.11.2009 of the court below in this case of Civil Judge, Junior Division, Jalandhar, hereby remands this case under order 41 rule 23-A of Code of Civil Procedure for fresh disposal in accordance with law by allowing the parties to lead their respective affirmative and rebuttal evidence thereupon after framing necessary issues thereon. The trial Court shall make every endeavour to finally dispose of this case within a period of four months from the date of receipt of this order and record. The case is now remanded to the trial court or its successor court whosoever it may be for 10.04.2013 through the office of this court. The entire record of the case be sent to the trial court or its successor court for 10.04.2013 and counsel for the parties are directed to appear there for 10.04.2013. It is clarified and directed by this court that parties to this lis shall fully co-operate with the trial

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court in every possible way to dispose of the case within a period of four months from the date of receipts of this record without seeking any unjustified and any unnecessary adjournments. Appeal file be consigned to the Record Room.”

There is no error, appears to have been committed by the lower Appellate Court, by remanding the case to the trial Court for *de novo* trial because once the amended written statement has been allowed to be filed, the suit has come to the stage of pleadings, on the basis of which the Court is required to frame relevant issues and allow the parties to lead their oral as well as documentary evidence. This exercise cannot be done in appeal and the matter cannot be decided by the lower Appellate Court either by allowing the parties to lead additional evidence before it or by framing some additional issue and then allowing the parties to lead evidence on that. Thus, the judgment relied upon by learned counsel for the appellants are not applicable to the facts and circumstances of the present case.

In view thereof, I do not find any merit in the present appeal and hence, the same is hereby dismissed though without any order as to costs.

February 24, 2015
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(**Rakesh Kumar Jain**)
Judge