

**SAO-82-2014(O&M)**

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**IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH**

**SAO-82-2014(O&M)**

**Date of decision : 04.02.2016**

Umed Singh

... Appellant

Versus

Smt. Kamlesh and another

... Respondents

***CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL***

Present: Mr.Sunil Chadha, Senior Advocate  
with Mr. Chetan Bansal, Advocate  
for the appellant.

Mr. Sandeep Sharma, Advocate  
for the respondents.

**REKHA MITTAL. J.**

The present appeal has been directed against order dated 21.01.2013 passed by the Additional District Judge, Rohtak whereby the application for amendment of the plaint was allowed and the case has been remanded to the trial Court with the observations that the trial Court may receive the amended plaint, amended written statement and replication etc. and thereafter decide the case afresh by taking the judgment and decree dated 06.04.1993, into consideration. Simultaneously, the judgment and decree dated 19.07.2010 passed by the trial Court are ordered to be set aside.

The order of notice of motion passed on 05.12.2014 reads as

follows:-

*“Learned counsel for the appellant, inter alia, contends that Kamlesh filed the suit for declaration and permanent injunction on the basis of a decree obtained against her husband in Civil Suit No.118 A of 1993. There was a typographical error in the judgment and decree because the date of decision was wrongly mentioned as 6.4.1994 which was actually 6.4.1993. In any case, the said decree was taken into consideration by the trial Court in its detailed judgment and dismissed the suit holding that the said decree was collusive between husband and wife and Kamlesh had not become the owner as the property had already been sold by Satyanarain to the present appellant. Aggrieved against the judgment and decree of the trial Court, Kamlesh filed the first appeal and at the same time filed an application in Civil Suit No.118 A of 1993 for correction of the date of decision. The said application was allowed and the actual date of decision was recorded as 6.4.1993 instead of 6.4.1994. Thereafter, she filed two applications, one under Order 6 Rule 17 of the Code of Civil Procedure, 1908 [for short ‘the CPC’] for amendment of the plaint and other under Order 41 Rule 27 of the CPC for permission to produce additional evidence. The application for additional evidence is still pending. However, the Appellate Court allowed the application filed under Order 6 Rule 17 of the CPC, as a result thereof, the plaint filed by Kamlesh was amended to the effect that the date of decree in Civil Suit No. 118 A of 1993 titled as “Smt. Kamlesh and others Vs. Sat Narain*

*and another” was corrected as 6.4.1993 instead of 6.4.1994.*

*However, at the same time, the learned Appellate Court has set aside the judgment and decree of the trial Court and remanded the case back to it on the ground that the amendment now brought in the plaint would have a substantial affect on the merits of the case.*

*Learned counsel for the appellant has argued that the amendment is only to change the date of decree in Civil Suit No.118A of 1993, otherwise the said judgment and decree has already been taken into consideration by the trial Court and the suit filed by Kamlesh has been dismissed.*

*Notice of motion for 29.1.2015.*

*In the meantime, further proceedings before the trial Court, pursuant to order passed by the Appellate Court, shall remain stayed.”*

Counsel for the appellant has submitted that he has no grievance to express in regard to order passed by the appellate Court, allowing application filed by the respondents under Order 6 Rule 17 of the Code of Civil Procedure (in short 'CPC') but he has a serious grievance to express against setting aside the judgment and decree passed by the trial Court and remitting the matter to the trial Court for adjudication afresh. It has been argued that the appellate Court, by referring to findings of the trial Court in para 33 reproduced in para 8 of the impugned order but without adverting to the findings of the trial Court in paras subsequent to 33 has passed the impugned order when otherwise

the case by no stretch of imagination can be brought within the ambit and preview of Rule 23A or/ and 25 of Order 41 CPC.

Counsel for the respondents is not in a position to support the order impugned passed by the Court in appeal.

I have heard counsel for the parties, perused the records and find that the submissions made by counsel for the appellant are meritorious and deserve to be accepted.

The Court in appeal allowed an application filed by the respondent/plaintiff for amendment in order to correct the date of judgment Ex.PW5/A being 6<sup>th</sup> April 1993 instead of 6<sup>th</sup> April, 1994 but at the same time set aside the judgment and decree appealed against and remitted the matter to the trial Court for adjudication afresh. A relevant extract from the impugned order reads as follows:-

*“In view of the afore-said discussion, the application for amendment of plaint is allowed and case is remanded back to the learned trial Court with the observation that learned trial Court may receive the amended plaint and amended written statement and replication etc. and thereafter to decide the case afresh while taking the judgment and decree dated 6.4.1993 under consideration. Accordingly, the judgment and decree dated 19.7.2010, which have been challenged in this appeal, are hereby set aside and accordingly, the appeal filed by the plaintiff has become infructuous.”*

As has been rightly argued by counsel for the appellant, the

Court in appeal has referred to the observations of the trial Court recorded

in para 33 but failed to take into consideration the observations made in subsequent paras wherein the Court refused to rely upon the judgment and decree Ex.PW5/A and Ex.PW5/B for the reasons recorded therein. I find merit in the contentions of the appellant that the impugned order cannot stand the test of judicial scrutiny when examined on the touch stone of conditions or situations contemplated in Rules 23-A and 25 of Order 41 CPC.

For the foregoing reasons, the appeal is allowed, the impugned order is set aside with a direction to the Court in appeal to decide the appeal afresh in accordance with law. However, the respondents may file an amended plaint in the light of amendment allowed by the Court and thereafter the appellant may file his written statement.

**(REKHA MITTAL)**  
**JUDGE**

**February 04, 2016.**  
*Davinder Kumar*