

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA No.6378 of 2016 (O&M)
Date of Order: 30.08.2017

Lal Singh (deceased) through his LRs

..Appellants

Versus

Rajender and others

..Respondents

(2) RSA No.6381 of 2016

Lal Singh (deceased) through his LRs

...Appellants

Versus

Hari Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Mittal, Advocate,
for the appellants.

ANIL KSHETARPAL, J (Oral)

By this common order, I shall be disposing off two regular second appeal Nos.6378 and 6381 of 2016.

Plaintiff through his legal heirs has filed this appeal against the judgment passed by the learned Additional District Judge, Narnaul, dated 23.08.2016, remanding the case back to the trial Court for re-decision.

Learned first appellate Court has given two reasons for setting aside the judgment and decree passed by the trial Court and for remand back of the case:-

- (i) Plaintiff has not proved that the construction alleged to have been raised by the defendants is during the

pendency of the suit or prior thereof.

- (ii) The trial Court has used the evidence led by the parties in a proceeding arising out of the application under Order 39 Rule 2(A) of the Code of Civil Procedure, which was not part of the record of the civil suit.

Learned counsel for the appellant has submitted that the power of remand vests with the appellate Court only under Order 41 Rule 23 and 23-A CPC. He submits that the present case is not covered by any of the provisions. For facility of reference, Order 41 Rule 23 and Rule 23-A are extracted 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, which 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.

23A . Remand in other cases— Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.]

A reading of Order 41 Rule 23-A CPC shows that apart from

the powers of remand under Rule 23 CPC, there is a general power of remand under Rule 23-A CPC. The Court can remand the case and order re-trial, if the appellate Court feels that the decree in appeal is to be reversed and the re-trial is considered necessary. In the present case, the Court has found that the re-trial is necessary because the trial Court committed an error in relying upon the evidence, which was not part of the record of the civil suit.

For the reasons recorded above, I do not find any good ground to interfere with the judgment passed by the learned first appellate Court. The regular second appeals are dismissed.

However, it is clarified that since the case is being remanded back for re-trial, the parties would be at liberty to lead evidence to establish their case.

August 30, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No