

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

**SAO No. 41 of 2015 (O&M)
DECIDED ON: MARCH 14, 2017**

KARNAIL KAUR & ANOTHER

.....APPELLANTS

VERSUS

MALKIAT KAUR & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sandeep Bansal, Advocate
for the appellants.

JASPAL SINGH, J

Challenge in this appeal is to the order dated April 20, 2015 passed by learned Additional District Judge, (Fast Track Court), Bathinda whereby, the judgment and decree dated July 30, 2012 passed by learned Additional Civil Judge (Sr. Division), Talwandi Sabo has been set aside and the case has been remitted to the learned trial Court for afresh decision after allowing the application filed by appellant/defendants for additional evidence.

A glance at the impugned order dated April 20, 2015 transpires that the same is violative of the provisions contained under Order XVI Rules 23 and 23-A or Order 41 Rule 25 of the Code of Civil Procedure (for short 'Code'). It is well settled proposition of law that when

an application for adducing additional evidence preferred by either of the parties to the appeal is allowed, Appellate Court has only two options open to it, first, it may record the evidence itself; second, it may direct the trial Court to do so and send the same alongwith its report for the appraisal of Appellate Court. The Hon'ble Supreme Court while dealing with the similar identical question in the case of **Shanti Devi & others v. Daropti Devi & others; 2007 (1) RCR (Civil) 411; (2006) 13 SC 775;** observed as under:

“But the same by itself could not be a ground for remitting the entire suit to the learned trial Judge upon setting aside the decree of the learned trial Court. The power of remand vests in the appellate court either in terms of Order 41 Rules 23 and 23A or Order 41 Rule 25 of the Code. Issue 4 was held to have been wrongly framed. Onus of proof was also wrongly placed and only in that view of the matter the High Court thought it fit to remit it to the learned trial Judge to determine a question of fact, which according to it was essential upon reframing the issue.”

9. *None of the aforementioned provisions were available to the High Court. We, therefore, in modification of the order passed by the High Court direct as under:*

(i) The learned trial court upon recording the evidence as directed by the High Court shall transmit the records to the First Appellate Court with a copy of its report annexed thereto.

(ii) Such an exercise by the learned trial Court must be completed within a period of four weeks from the date of communication of this order.

(iii) The first appellate court must dispose of the first appeal

on receipt of the said order as also the evidence as adduced as expeditiously as possible and not later than 8 weeks from the date of receipt of the said report.

In view of above, this Court is of the considered opinion that Appellate Court could not have directed trial Court to dispose of the suit after taking the evidence. Such an order of remand could only be passed in terms of order 41 Rules 23 and 23-A or Order 41 Rule 25 of the Code. As such the impugned order dated April 20, 2015 passed by learned Additional District Judge, (Fast Track Court), Bathinda being against the law and facts is set aside by way of acceptance of instant revision, with a direction to trial Court, upon recording the evidence as directed by Appellate Court shall transmit the record to the first Appellate Court with a copy of its report annexed thereto. Such an exercise by learned trial Court must be completed within a period of three months from the date of communication of this order and first Appellate Court must dispose of the appeal as expeditiously as possible but not later than three months from the date of receipt of report/evidence to be submitted by learned trial Court.

Accordingly instant appeal is disposed of.

No order as to costs.

**JASPAL SINGH
JUDGE**

**MARCH 14, 2017
sham**

***Whether speaking/reasoned
Whether reportable***

***Yes/No
Yes/No***