

In the High Court of Punjab and Haryana at Chandigarh

RSA- 1981 of 2018(O&M)
Date of Decision: 13.8.2018

Sawal Dass

---Appellant

versus

Gopal Prasad and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Akshay Kumar Goel, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against the judgment and decree dated 17.3.2018 passed by the Additional District Judge, Bhiwani whereby the judgment and decree dated 12.2.2014 passed by the trial court dismissing suit of respondent-plaintiff Gopal Prasad were set aside and the case has been remanded to the trial court for decision of the suit afresh on merits.

Counsel for the appellant would urge that as the Court in Appeal ordered for preparation of a decree and decree was actually prepared, he has filed the regular second appeal even though the order with regard to remittance of the case to the trial court for decision afresh was required to be challenged by filing Second Appeal from Order (S.A.O.).

Be that as it may, it is undisputed position of the case that while setting aside the judgment and decree passed by the trial court, the

matter has been remitted to the trial court for decision afresh meaning thereby that the entire matter was re-opened for decision by the trial court. The mere fact that the Court in Appeal has wrongly ordered for preparation of decree or a decree has actually been prepared without any final adjudication by the Court in Appeal, regular second appeal by invoking the provisions of Section 100 of the Civil Procedure Code is not maintainable and the appropriate remedy for the appellant is to file SAO. That being so, the present appeal is liable to be disposed of but with liberty to the appellant to file SAO.

For the foregoing reasons, the appeal stands disposed of. The appellant is left at liberty to file SAO within a period of one month without inviting the rigor of appeal being barred by limitation.

(Rekha Mittal)
Judge

13.8.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No