

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

**SAO No. 104 of 2016 (O&M)
Date of Decision: February 27, 2019**

Siri Ram through his LR's

.....APPELLANTS

VERSUS

Smt. Murti Devi

.....RESPONDENT

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amit Jain, Advocate
for the appellants.

Mr. Sachin Mittal, Advocate
for the respondents.

SURINDER GUPTA, J.(Oral)

Heard.

Vide order dated 26.10.2016, the Ist Appellate Court while hearing the appeal against the judgment and decree dated 31.01.2015 passed by Civil Judge (Jr. Division), Gurgaon (now Gurugram) allowed the application filed by appellant/plaintiff Murti Devi for production of additional evidence and remanded the case to the trial Court to decide the case afresh. The relevant observations of Ist Appellate Court in para No. 25 of the judgment are reproduced as follows:

Therefore, this case is also required to be remanded back to the learned trial Court for effective decision of the matter in controversy. The case Siri Ram vs. Smt. Murti Devi is required to be decided along with the present case of

Smt. Murti Devi vs. Siri Ram because the matter in controversy in both the suits is the same. Therefore, it is desired that both the cases should be decided together for the sake of convenience by one court only. It is also desired that the learned trial court would allow the other party to cross-examine the plaintiff and to produce its own evidence in rebuttal to the additional evidence which is allowed by this court. The learned trial court would decide the matter afresh after obtaining the evidence of both the parties including the additional evidence as allowed by this court. The judgment of the learned trial Court dated 31.01.2015 is also set aside being illegal and perverse.

This fact is not disputed that while remanding the case, learned Additional Sessions Judge, Gurgaon has not set aside the findings of lower Court on any issue. The question which arises for consideration is as to whether the remand of case on the ground that application of appellant to lead additional evidence has been allowed, is sustainable? The order passed by the Ist Appellate Court does not fall within the purview of Order 41 Rule 23, 23 A and 25 of the Code of Civil Procedure. The option open before the Ist Appellate Court after allowing the additional evidence was either to record the additional evidence and then decide the appeal in accordance with law or to direct the lower Court to record the additional evidence as allowed by it; to give opportunity to other party to lead evidence in rebuttal, if any, and then sent the report along with evidence recorded by it.

Keeping in view the above proposition of law, the order passed by the Ist Appellate Court remanding the case to the trial Court with direction to decide the same afresh merely on the ground that appellant was allowed to lead additional evidence is not sustainable and is set aside.

This appeal has merits and the same is allowed. The parties are directed to appear before the Ist Appellate Court/Successor Court on 18.03.2019. The Ist Appellate Court will take the file of appeal on Board and proceed to decide the same on merits after obtaining the report of trial Court on additional evidence allowed by it.

February 27, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***