

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

204

SAO-96-2016 (O&M)
Date of Decision : 02.09.2019

Mehakdeep Singh and another

.... Appellants

Versus

Amarjit Kaur and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. H.S.Batth, Advocate
for the appellants.

Mr. Minkal Tathai, Advocate
for respondent No.1.

RAMENDRA JAIN, J. (ORAL)

Through this appeal, defendants No.2 and 3 have laid challenge to the judgment of lower Appellate Court dated 23.08.2016, whereby it has remanded the case to trial Court for decision afresh after recording evidence of both the sides and returning finding on the additional issues.

Briefly, respondent No.1/plaintiff filed a suit for declaration that she was cosharer in possession of land measuring 38 kanals 11 marlas situated at village Akbarpura, Tehsil Patti, District Tarn Taran, fully detailed in the head note of the plaint and in the alternative she was co-sharer in possession of land measuring 19 kanals 6 marlas as a half share.

Learned trial Court, after holding trial, dismissed her

suit vide judgment and decree dated 09.09.2015.

Being aggrieved respondent No.1/plaintiff approached the First Appellate Court, who while framing three additional issues as discussed above remanded the case to the trial Court for fresh decision.

Heard.

Having given thoughtful consideration to the rival submissions, this Court is of the view that the Appellate Court instead of framing additional issues and remanding case to the trial Court ought to have decided the appeal itself, inasmuch as, respondent/plaintiff pleading herself to be the daughter of Surjit Kaur wife of Lakha Singh had claimed herself to be a co-sharer in the suit land. Therefore, heavy burden lied upon her to prove herself to be the daughter of Surjit Kaur, leading cogent and convincing evidence. However, she did not lead any such evidence during trial. Thus, the learned trial Court rightly observed that non production of her birth certificate by respondent No.1/plaintiff to show her parentage was her intentional and deliberate act.

Contrary to it stand of appellants before the trial Court was that respondent No.1/plaintiff was daughter of Gurdeep Kaur and Jarnail Singh. Since, respondent No.1/plaintiff could not prove her to be the daughter of Surjit Kaur wife of Lakha Singh, therefore, there was no necessity to frame additional issue No.4 by the learned Appellate Court. That apart, there was also no

necessity of framing issue No.6 and 6A and 6B qua execution of Will by Lakha Singh in favour of his wife Surjit Kaur, inasmuch as, the said fact was not disputed by any side.

From the above factual aspect of the case, it is apparent that the Appellate Court could decide the appeal on merits itself after appreciation of evidence led by both the sides, during trial, to their satisfaction. It is well settled proposition of law that framing or non framing of any issue becomes insignificant after leading evidence by both the sides to their satisfaction, knowing their case well.

Nowadays, it is generally seen that lower appellate Courts instead of discharging their legal duties and shirking from their judicial responsibilities, by and large have started adopting shortcut method of remanding the case to the trial Court for fresh decision.

It is also needless to mention here that remand of case is not a healthy practice. In normal circumstances, the Appellate Courts must avoid remand of the case, in view of the fact that the same puts a huge burden of expenses, reinvolvement of precious time and energy of the Court and the litigant. Therefore, sense of responsibility does not permit remand of a case, whereby the appellate Court/authority itself can delve the issue, without any extra pain or efforts only by going through the record which the trial Court escaped to look into inasmuch as the appellate Court has

much more wisdom and power than the trial Court to undo an illegality or irregularity committed by the lower Court.

In view of the discussion made above, the impugned order of the Appellate Court is set aside with a direction to it to decide the appeal on merits in accordance with law along with application of respondent No.1/plaintiff, if any, for additional evidence.

September 02, 2019
anju

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No