

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

**SAO No.27 of 2015 (O&M)
Date of Decision: April 09, 2019.**

Harbhajan Kaur and others

.....APPELLANT(s).

VERSUS

Piara Singh since deceased through LRs and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. C.L. Verma, Advocate
for the appellant (s).

Mr. Harsh Bunker, Advocate
for respondent No.2.

SURINDER GUPTA, J.

Appellants-plaintiffs filed suit seeking separate possession by way of partition of their 1/3rd share in the suit property, which was decreed by the trial Court. Defendant Piara Singh since deceased through his legal representatives and Gurdev Ram filed appeal and learned first Appellate Court remanded the case to the trial Court with direction to decide the case afresh after framing additional issue as follows:-

'Whether the suit is bad for partial partition? OPD'

Order 41 Rule 25 CPC deals with remand of case on framing of additional issue as follows:-

“25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from—Where the Court from whose decree the appeal is

preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within such time as may be fixed by the Appellate Court or extended by it from time to time.”

It is evident from perusal of the above provisions that after framing of additional issue, first Appellate Court can refer the same to the trial Court to take additional evidence or it can record the same of its own. The framing of additional issue is no ground to remand the case for fresh decision by the trial Court when it has recorded finding on all the remaining issues on merits, which has not been set aside to the extent it remands the case to the trial Court for fresh decision. On framing of additional issue, first Appellate Court will proceed as per Order 41 Rule 25 CPC and decide the appeal on merits.

The parties are directed to appear before the first Appellate Court on 07.05.2019, on which date, appeal file be taken on board by the first Appellate Court to decide the same as per the observations above.

April 09, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No