

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

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**SAO No. 93 of 2015 (O&M)
Date of Decision: April 02, 2019**

Mohinder Kumar @ Sonu and others

.....APPELLANTS

VERSUS

Suraj Bhan and others

.....RESPONDENTS

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SAO No. 70 of 2016 (O&M)

Amrik Singh and others

.....APPELLANTS

VERSUS

Suraj Bhan and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S.Budhwar, Advocate
for the appellants in SAO No. 93 of 2015.

Mr. R.S.Manhas, Advocate
for the appellants in SAO No. 70 of 2016.

Mr. Sanjiv Gupta, Advocate
for the respondents in both the appeals.

SURINDER GUPTA, J.(Oral)

Learned counsel for appellants argues that trial Court had framed six issues in this case and recorded findings on issues no. 1 to 5. It appears that by oversight findings on issue no. 6 were not recorded, which was only a legal issue. The Ist Appellate Court after recording its findings on issues no. 1 to 5 and reversing findings of trial Court on issues no. 1 and 2, could call report of the trial Court on issue no. 6 and decide the question

of maintainability of suit. After Ist Appellate Court has reversed the findings of trial Court on issues no. 1 and 2 and has not interfered in its findings on issues no. 3 to 5, on remand the trial Court cannot go beyond findings of Ist Appellate Court.

Learned counsel for the respondent has argued that it was by mere omission that the trial Court did not mention issue no. 6 along with issues no. 3 to 5. However, he has no objection if the matter is sent to trial Court to send a report on issue no. 6 to the Ist Appellate Court and the Ist Appellate Court after taking the report be directed to record its findings on issue no. 6 as well.

The trial Court recorded its findings on issues no. 1 to 5 but omitted to record its findings on issue no. 6, which is as follows:

6. Whether the suit is not maintainable? OPD.

The findings of the trial Court on issues no. 1 to 5 were looked into by the Ist Appellate Court. The findings on issues no. 3 to 5 were virtually affirmed and on issues No. 1 and 2 were reversed. In view of specific findings recorded by the Ist Appellate Court on the above issues the trial Court after remanding the case will not be in a position to record above findings as recorded by the Ist Appellate Court. The course open to the Ist Appellate Court was to call for the report of trial court on issue no. 6 and then to decide the appeal.

In view of the submissions of learned counsel for the parties, the order passed by the Ist Appellate Court setting aside the judgment of the trial Court and remanding the case after giving it direction to decide the same afresh by recording its findings on all the issues is set aside. Both the

appeals are allowed.

Parties are directed to appear before the Ist Appellate Court/Successor Court, Kurukshetra on 30.04.2019. The appeal file be taken on Board and Ist Appellate Court shall proceed further to decide the same after taking report of trial Court on issue no. 6. As the matter is quite old, the Court below is directed to dispose of the same at the earliest.

April 02, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

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

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