

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 16 of 2014 (O&M)

Date of Decision: 20.05.2019

Pritam Singh and another

....Appellants

VERSUS

Jaswinder Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Himmat Singh Sidhu, Advocate
for Mr. R.S. Dhaliwal, Advocate
for the appellants.

Mr. Gaurav Singla, Advocate
for the respondents.

SURINDER GUPTA, J. (Oral)

Heard.

Suit filed by plaintiffs-appellants, Pritam Singh and Malkiat Singh, seeking declaration that they are owner of 2/3^d share in the suit property was decreed by Civil Judge (Junior Division), Sunam. In appeal filed by defendants-respondents, learned Ist Appellate Court took note of the fact that learned trial Court has decreed the suit with observation that suit property is ancestral property despite there being no pleadings of plaintiffs to this effect. Relevant observations of learned Ist Appellate Court in para 11 of the order are reproduced as follows:-

“11. Perusal of the pleadings of the parties and the judgment, as delivered by the learned trial Court, would reveal that the judgment is not in consonance with the pleadings as set out by the respondents/plaintiffs. While disposing of issues No.1 to 3, the learned trial Court has

some how in para No.14 of the judgment has given a finding that the property in dispute is ancestral property qua which the respondent/defendant No.2 namely Jinder Kaur has no right to transfer the ownership in favour of appellant No.1/defendant No.1 namely Jaswinder Singh, the other brother of the respondents/plaintiffs more particularly so it has been held that when her husband is alive. When the pleadings of the respondents/plaintiffs would be perused, then it would come to the fore that it is not the case of the respondents/plaintiffs that the disputed property was ancestral property. It is strange to observe that ancestral character of the property has been held without any pleading or documentary proof on record. On the basis of oral evidence, the disputed property is held to be ancestral property qua which I am afraid to hold that it is not the essence of law. Even on the basis of admissions, the nature of the property cannot be held to be ancestral what to talk of holding the property ancestral, when a declaration was never sought and ownership of the mother of parties has been pleaded in plaint. Accordingly, the judgment in question does not stand the judicial scrutiny and the same is liable to be set aside. Appeal is allowed with a direction to the trial Court to re-decide the matter after hearing the parties afresh as the case is remanded back. Both the parties are directed to appear before the learned

trial Court on 6.1.2014 at 10.00 am sharp and thereafter the trial Court to re-decide the matter within a fortnight positively.”

The question, which arises for consideration in this appeal, is as to whether disagreeing with findings of lower Court could be a reason for remanding the case? Order XLI Rules 23 and 23A CPC prescribe the circumstances under which a case can be remanded by the Appellate Court. The same are reproduced as follows:-

“23. Remand of case by Appellate Court:-

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred. ,which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23A. Remand in other Cases -

Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal

and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.”

Learned Ist Appellate Court in appeal has ample power to agree or disagree with findings recorded by lower Court. While remanding the case vide order dated 16.12.2013, learned Ist Appellate Court appears to be not agreeing with a particular finding recorded by the lower Court. In that eventuality, the option available with learned Ist Appellate Court was to proceed further to decide the appeal on merit, rather than remanding the case as lower Court has already recorded its findings on all the issues.

As a sequel of my above discussion, this appeal has merit and is accepted. Order passed by learned Ist Appellate Court is not legally sustainable and is set aside.

Parties through their counsel are directed to appear before learned Ist Appellate Court/successor Court on 05.07.2019, on which date appeal file shall be taken on board and proceeded further to decide the same as per above observations.

May 20, 2019

jk

**(SURINDER GUPTA)
JUDGE**

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

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