

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 1 of 2017 (O&M)
Date of Decision: 20.05.2019

Sukhbir Singh

...Appellant

VERSUS

Sukhchain Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Bikramjit Aroua, Advocate
for the appellant.

Mr. C.L. Verma, Advocate
for respondent no. 1.

SURINDER GUPTA, J. (Oral)

Heard.

Learned counsel for the appellant submits that learned Ist Appellate Court framed the following issue and remanded the case to trial Court for decision afresh:-

“Whether Sarmukh Singh is the son of Deva Singh born out of wedlock from Harnam Kaur and the same Deva Singh, who has given birth to Dayal Singh father of Jagat Singh out of the wedlock with other wife Gurnam Kaur? OPP”

The question, which arises for consideration in this appeal, is as to whether framing of additional issue by learned Ist Appellate Court could be a reason to remand the case. To answer this question a reference can be made to provisions of Order XLI Rule 25 CPC, which reads 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.”

As per above specific provision of law, order passed by learned Ist Appellate Court is not legally tenable. The option before learned Ist Appellate Court after framing of additional issue was to send the file back to learned trial Court to record evidence with direction to return the file with its findings on additional issues as per provisions of Order XLI Rule 25 CPC.

Learned counsel for respondent no. 1 submits that some more issues arise in this case, which have not been framed by learned Ist Appellate Court.

This fact is to be seen by learned Ist Appellate Court while proceeding further in the matter.

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 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