

In the High Court of Punjab and Haryana, at Chandigarh

S.A.O. No. 3 of 2022 (O&M)

Date of Decision: 07.02.2022

Keshav Sanghi and Others

... Petitioner(s)

Versus

Manoj Kumar Sharma and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanjay Mittal, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. The defendants, in a suit for permanent injunction, assails the correctness of the order passed by the First Appellate Court, while setting aside the judgment of the trial Court and remanding the matter back to the trial Court for fresh decision.

2. The plaintiff, claiming to be the successor-in-interest of late Sh.Ratti Ram Sharma, filed the suit. The defendants contested the suit while claiming to be the bonafide purchasers of the property from Sh.Laxminarayan and Sh. Opendar Kumar Sharma, vide sale deed No. 2835 dated 21.06.2017. The trial Court dismissed the suit, whereas the First Appellate Court, after recording detailed reasons, has remanded back the matter to the trial Court. The detailed reasons, recorded by the First Appellate Court, are as under:-

- i) In brief, the First Appellate Court has found that the trial Court erred in opining that the plaintiff has failed to place

on record any site plan of the suit property, whereas the site plan has been placed on record by the concerned Clerk of the Municipal Council, Narnaul, which was sufficient to identify the suit property.

- ii) The trial Court has failed to take notice of the fact that the names of the vendors of the defendants are not recorded as owners against khasra No. 6189.
- iii) The defendants have failed to prove the ownership of their vendors over khasra No. 6189.
- iv) The defendants failed to examine their vendors in evidence.

3. Heard the learned counsel representing the appellants and with his able assistance, perused the paper-book.

4. The learned counsel representing the appellant contends that the First Appellate Court was well within its jurisdiction to decide the appeal on merits, on appreciation of the evidence. However, the First Appellate Court had no jurisdiction to remand the matter to the trial Court.

5. On a careful reading of Rule 23A of the Order XLI CPC, it is evident that the Appellate Court has an enabling power to remand the case if the decree is reversed in appeal and a retrial is considered necessary. In the present case, the First Appellate Court has not remanded the case without discussing the evidence and analyzing the reasons recorded by the trial Court. As already noticed, the First Appellate Court has recorded four different reasons in order to point out the errors in the judgment of the trial Court. Rule 23A of Order XLI CPC cannot be read in a manner as

suggested by the learned counsel representing the appellant.

6. The learned counsel representing the appellant submits that in view of the findings given by the First Appellate Court, the trial Court would decide the matter against the defendants.

7. While remanding the case back, the First Appellate Court has made certain observations. Once the matter has been remanded back, the trial Court is expected to decide the case on merits while keeping in view the entire facts and circumstances of the case, independent of the observations made by the First Appellate Court.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the judgment passed by the First Appellate Court. Consequently, the present appeal is dismissed.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

February 07, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No