

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

SAO No.17 of 2017 (O&M)

DATE OF DECISION : 17.03.2022

Yashpal Khanna

.....Appellant

Versus

Ravinder Nath now deceased through LRs and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.S. Bajaj, Advocate for the appellant

..

ALKA SARIN, J. (Oral):

Heard in hybrid mode.

CM-3009-CII-2022:

This is an application for extension of the interim order granted by this Court vide order dated 22.02.2017.

Notice of the application.

Mr. Manish Kumar Singla, Advocate, who is present in Court, accepts notice on behalf of the non-applicant/legal representative No.(i) of respondent No.1 namely Virender Mayor while Mr. R.S. Bains, Senior Advocate assisted by Ms. Aarushi Garg, Advocate has put in appearance through video conferencing, representing the non-

applicant/legal representative of respondent No.1(ii) namely Dr. Geeta Mayor.

Learned counsel for the parties are *ad idem* that instead of adjudicating upon the present application, the main case itself may be decided. With the consent of the learned counsel, the main case is taken on board today itself.

CM disposed off.

SAO-17-2017:

The present appeal has been filed challenging the order dated 29.08.2016 whereby the lower Appellate Court has not set aside the findings on the issues returned by the Trial Court and instead, after framing additional issue No.2A, has remanded the entire case for deciding it afresh by the Trial Court. Issue No.2A, framed by the lower Appellate Court, is reproduced as under :

“Issue No.2A: Whether the plaintiff is entitled to the relief of recovery of market value of the suit property as prayed for ? ...OPP”

Learned counsel for the appellant would contend that the lower Appellate Court after framing of the additional issue, as per provisions of Order 41 Rule 25 of the Code of Civil Procedure, 1908 (CPC), could have remanded the matter to a limited extent to the Trial Court i.e. for recording of additional evidence on the said issue and for returning a finding on the same.

Per contra, learned counsel for the respondents have vehemently contended that there is no ground for interference in the

impugned order in as much as a fresh decision would be required on the merits of the case in view of additional Issue No.2A which has been framed by the lower Appellate Court.

Heard.

Order 41 CPC pertains to appeals from original decrees and Rule 25 thereof reads as under :

“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.”

A perusal of the above reproduced Order 41 Rule 25 CPC clearly reveals that the lower Appellate Court can frame an additional issue and thereafter would have to refer the same for trial to the Court

from whose decree the appeal is preferred. In the present case, the procedure as laid down in Order 41 Rule 25 CPC has not been followed. Rather, the entire judgment and decree passed by the Trial Court has been set aside and the matter has been remanded for a fresh decision on merits. The lower Appellate Court without setting aside the findings recorded by the Trial Court could not have set aside the judgment and decree in its entirety. The correct procedure to have been followed was as laid down in Order 41 Rule 25 CPC.

In view of the above, the present appeal is allowed and the impugned order of the lower Appellate Court is modified to the extent that the matter would be referred to the Trial Court only to the limited extent of taking additional evidence qua the freshly framed issue, if required, and to try the freshly framed issue. The report shall thereafter be sent to the lower Appellate Court which shall decide the appeal in accordance with law.

Parties to appear before the Trial Court on 23.03.2022.

Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

17.03.2022
parkash

NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO