

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

**SAO-63-2018 (O&M)
Reserved on : 05.12.2022
Date of Decision : 14.12.2022**

Kanwar Jasbir Singh @ Jasbir Singh

....Appellant

VERSUS

Satnam Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harminder Singh, Advocate for the appellant.

Mr. G.S.Sirphikhi, Advocate for respondent Nos.1 and 2.

ALKA SARIN, J.

The present appeal has been preferred against the order dated 30.03.2018 passed by the lower Appellate Court remanding the case to the Trial Court.

The brief facts relevant to the present lis are that the plaintiff-appellant filed a suit seeking relief of possession after removing the entire construction malba illegally alleged to have been raised by the defendant-respondents. It was averred in the plaint that the property as described in the plaint belongs exclusively to the plaintiff-appellant. It was further averred that the property measuring 2 kanals which belonged to Buta Singh was sold to the plaintiff-appellant vide registered sale deed dated 28.12.1959 and the mutation was also got sanctioned as well as possession handed over. It was further averred that the brothers of the plaintiff-appellant namely, Dalip

Singh and Amar Singh, did not have any right, title or interest in the

property and the plaintiff-appellant was the exclusive owner of the property measuring 2 kanals. The case set-up further was that one Raghbir Singh tried to dispossess the plaintiff-appellant from the suit property and a suit for permanent injunction was filed against Raghbir Singh and ad interim injunction was granted. During the pendency of the appeal, the defendant-respondents herein are alleged to have illegally trespassed over the disputed property and raised illegal construction. Therefore, the present suit was filed for possession.

The suit was contested by the defendant-respondents. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled for relief of possession as prayed for ? OPP
2. Whether the suit is bad for non-joinder of parties ?
OPD
3. Whether the present suit is barred under Order 23
CPC ? OPD
4. Whether the plaintiff has got no locus standi to file
the present suit ? OPP
- 4A. Whether the suit property falls in khasra number
629 as alleged ? OPP
- 4B. Whether the suit property is the portion of the
khasra number 82R/23 and 94R/3/1 originally ?
OPD

4C. Whether the khasra number 82R/23 and 94R/3/1
were converted into khasra number 629 as alleged
? OPP

5. Relief.

The plaintiff-appellant led his evidence. The defendant-respondents led part of their evidence and vide order dated 15.12.2014 the evidence of the defendant-respondents was closed by order. The said order was not challenged. On the basis of the pleadings of the parties and the evidence on the record, the suit was decreed. Aggrieved by the said judgment and decree dated 27.02.2015, an appeal was preferred. The lower Appellate Court, without reversing the findings returned by the Trial Court, remanded the case to be decided afresh after affording an opportunity to the defendant-respondents to conclude their evidence. Aggrieved by the said order, the present appeal has been preferred by the plaintiff-appellant.

Learned counsel for the plaintiff-appellant would contend that the suit has been remanded by the lower Appellate Court only on the ground that the defendant-respondents were not given sufficient opportunities to examine their witnesses and to conclude their evidence. It is further the contention that without reversing the findings returned by the Trial Court, the lower Appellate Court is not empowered to remand the case. It is further the contention that order dated 15.12.2014, whereby the evidence of the defendants-respondents was closed, was never challenged.

Per contra, learned counsel for defendant-respondent Nos.1 and 2 has contended that the order closing the evidence could be challenged in

appeal and hence the order remanding the case has rightly been passed by the lower Appellate Court.

Heard.

It is trite that when the Appellate Court remands the case it cannot be done without reversing the findings given by the Trial Court. The lower Appellate Court without going into the merits of the case has simply, on the ground that the defendant-respondents were not given sufficient opportunities to lead evidence, remanded the case. The lower Appellate Court before exercising the power of remand should have first reversed the findings on all issues recorded by the Trial Court. Since this has not been done, the impugned order dated 30.03.2018 cannot be sustained.

The appeal is accordingly allowed. The case is remanded back to the lower Appellate Court with a direction to decide the appeal afresh in accordance with law. Pending applications, if any, also stand disposed off.

14.12.2022
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(ALKA SARIN)
JUDGE

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