

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

**SAO No.41 of 2022 (O&M)
DATE OF DECISION : 21.12.2022**

Jarnail Singh (since deceased) through his legal heirsAppellants

versus

Laik Ram and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Dhruv Chowfla, Advocate for the appellants

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ALKA SARIN, J. (Oral)

The present appeal has been preferred against the order dated 22.12.2021 passed by the lower Appellate Court whereby the suit has been remanded to the Trial Court for decision afresh in view of the fact that an error patent on the face of the record was committed by the Trial Court in as much as the suit was decided on the basis of the issues framed by the Trial Court on 22.02.2013 and not on the basis of the issues framed subsequently by the Trial Court on 28.09.2015. The issues framed on 22.02.2013 read as under :

1. Whether the plaintiff is entitled for declaration, as prayed for? OPP

2. Whether the plaintiff is entitled for permanent injunction, as prayed for? OPP
3. Whether the plaintiff is entitled for mandatory injunction, as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Relief.

The issues framed thereafter on 28.09.2015 are also reproduced hereunder :

1. Whether plaintiffs are entitled for declaration, as prayed for? OPP
2. Whether plaintiffs are entitled for permanent injunction, as prayed for? OPP
3. Whether plaintiffs are entitled for mandatory injunction, as prayed for? OPP
4. Whether present suit is not maintainable? OPD
5. Whether plaintiffs have no locus standi and cause of action to file the present suit? OPD
6. Whether suit is not valued for the purpose of court fee and jurisdiction? OPD
7. Whether present suit is liable to be dismissed for want of notice before filing the present suit? OPD
8. Relief.

The lower Appellate Court, noticing the error, rightly remanded the matter to the Trial Court for deciding afresh. While

remanding the case, the lower Appellate Court has clarified that in case the Trial Court feels any need to frame an issue in respect of the Will it may do so and take additional evidence, if so required.

The learned counsel for the appellants contends that the appellants are aggrieved against the clarification made by the lower Appellate Court giving liberty to the Trial Court to frame an additional issue and take additional evidence, if so required, regarding the Will. The learned counsel would further contend that the provisions of Order 41 Rule 25 of the Code of Civil Procedure, 1908 (CPC) have not been complied with.

Heard.

In the present case the question of complying with the provisions of Order 41 Rule 25 CPC would not arise in as much as the error committed by the Trial Court by deciding the suit on the issues framed on 22.02.2013 is apparent on the face of the record whereas, admittedly, fresh issues were framed by the Trial Court on 28.09.2015 which have not been touched upon by the Trial Court while deciding the suit. In view of the said fact, the matter has rightly been remanded by the lower Appellate Court and the impugned order cannot be faulted with. Moreover, while remanding the matter it has been clarified that in case the Trial Court feels any need to frame an issue in respect of the Will it may do so and may also take additional evidence, if so required. No fault can be found with the said observation as no specific issue has been framed qua the Will.

In view of the above, I do not find any illegality or infirmity in the order passed by the lower Appellate Court. The appeal which is devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

21.12.2022
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(ALKA SARIN)
JUDGE

NOTE:

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