

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

136

SAO-28-2023 (O&M)
Date of decision: 28.07.2023

MANJIT KAUR

....Appellant

Versus

JARNAIL SINGH SINCE DECEASED THROUGH HIS LRS AND
OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Vijay Lath, Advocate &
Mr. Naveen Sharma, Advocate for the petitioner.

Mr. Gurvinder Arora, Advocate for the respondents.

ANIL KSHETARPAL. J.(Oral)

1. Petitioner herein was defendant No.1 in a suit for grant of decree of declaration to the effect that the plaintiffs and defendant No.2 are owners in possession of 1/3rd share each of the suit land. In the plaint, several other reliefs were also prayed. The trial Court dismissed the suit, vide a detailed judgment dated 04.08.2016. Plaintiffs filed the first appeal. During the pendency of the appeal, an application for permission to lead additional evidence was filed, which was allowed. Thereafter by a separate order of the same date, the First Appellate Court remanded the case back to the trial Court for deciding afresh, after grant of another opportunity to the plaintiff to appear in evidence.

2. This Court in *SAO-82 of 2015 titled as Bhagwan Devi Through her Lrs Vs. Veena Devi @ Krishna Devi and Anr* has examined the provisions of Section 107 IPC read with order XLI Rule 23 and 23-A to regulate the powers of

the Appellate Court to remand the case. Order XLI Rule 23 is applicable when the suit has been decided on a preliminary issue, which is subsequently set aside by the First Appellate Court. Whereas, Order XLI Rule 23-A is applicable when the decree is reversed in appeal and a retrial of the suit is considered necessary. Hence, before an order of remand of the suit is passed, the Court is required to fulfill two parameters. First is that the judgment and decree passed by the trial Court is reversed on merits. Second, the retrial of the suit is considered necessary. It is evident from the reading of the judgment passed by the First Appellate Court that the impugned order does not fulfill any of the aforesaid two tests.

3. At this stage, learned counsel representing the parties have come to a consensus. They pray for setting aside the judgment passed by the First Appellate Court while requesting the First Appellate Court to decide the appeal in accordance with law.
4. The order passed by the Appellate Court is modified only to the extent that the case shall not stand remanded to the trial Court.
5. With these observations, the present appeal is disposed of.

(ANIL KSHETARPAL)
JUDGE

July 28, 2023
Amandeep

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No