

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

140

2023:PHHC:099282

**SAO-36-2023 (O&M)
Date of decision: 02.08.2023**

PARAMJIT KAUR SOHI AND OTHERS

..Appellants

Versus

VARINDER SINGH SOHI AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwal Goyal, Advocate
and Mr. Ishan Gupta, Advocate
for the appellants.

Ms. Avin Kaur Sandhu, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. The correctness of order of remand passed by the First Appellate Court while deciding the first appeal has been assailed in this second appeal. The First Appellate Court has remanded the case back to the trial Court after allowing an application for permission to lead additional evidence only. In fact, this issue in detail has been examined in SAO-82-2015 Smt. Bhagwan Devi (deceased) through her LRs Vs. Smt. Veena Devi @ Krishna Devi and another, decided on 18.07.2023.

2. The relevant discussion is in para 4, which is extracted as under:-

“4. The power of the Appellate Court to remand the case back to the lower court is regulated by Section 107 read with Order XLI Rule 23 and 23A of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’). Rule 23 of Order XLI of CPC enables the Appellate Court to remand the case back to the trial court if the judgment has been passed on a preliminary issue and the aforesaid finding on the preliminary issue has been set aside by the Appellate Court. Rule 23A enables the Appellate Court to remand the case back to the trial court if the decree is reversed in appeal and a re-trial is considered necessary. Thus, the power of remand of the Appellate Court is

available only in the eventualities provided under Rule 23 and 23A of Order XLI. It is incumbent for the Appellate Court to set aside the judgment and decree passed by the trial court on merits and conclude by giving adequate reason for necessity of retrial of the suit. On a careful reading of the operative part of the impugned judgment, it is evident that the court has neither set aside the judgment of the trial court on merits nor it has recorded the reasons for which the re-trial is considered necessary. Learned counsel representing the respondent though requested to explain the reasons for necessity of re-trial, however, he failed to draw the attention of the Court in this regard.”

3. The learned counsel representing respondent No.1 upon realizing the legal position submits that she has no objection if the order passed by the First Appellate Court is set aside while requesting the First Appellate Court to decide the appeal in accordance with the provisions of Code of Civil Procedure, 1908.

4. In view of the aforesaid facts, the order passed by the First Appellate Court on 19.07.2023, is set aside. The first appeal is restored to its original number.

5. The parties through their learned counsels are directed to appear before the First Appellate Court on 31.08.2023.

6. All the pending miscellaneous applications, if any, are also disposed of.

August 02nd, 2023

Ay

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No