

2023:PHHC:090670

1. By this order, three connected appeals i.e SAO-82-2015, 83-2015 and 84-2015 shall stand disposed of.

2. The challenge in these three connected appeals is to the judgment passed by the First Appellate Court while remanding the three suits back to the trial court for deciding afresh. The dispute in the three connected suits is with regard to the inheritance of the properties left behind by Sh.Hari Kishan and his brother Sant Lal. Sh.Hari Kishan @ Ram Kishan is stated to have executed two Wills on 09.05.1991 and 13.06.2001 whereas Sant Lal, who was married and issueless, is alleged to have executed the Wills on 09.05.1991. The Wills dated 09.05.1991 are registered Wills.

3. All the three suits were dismissed by a detailed common judgment passed by the trial court while upholding the validity of Wills. The three connected appeals were filed before the First Appellate Court. All these three appeals have been allowed while remitting the cases back to the trial court for fresh decision. The relevant discussion reads as under:-

“23. In the present case, from the commutative effect of the evidence led by both the parties, it is clear that the Wills in question are shrouded by suspicious circumstances, as the testator has not mentioned in the same that he has one other daughter alive and the reasons for ignoring her. The respondents-defendants though in the amended written statement has admitted the appellant-plaintiff as daughter of Hari Kishan but denied the relationship with her. As per Section 50 of the Evidence Act, the onus to prove and produce the proof of relationship

or denial of relationship is upon the person, who denies the relationship of kinship to prove it. In this regard, I draw support from Piara Singh Johan and another Vs. Gej (Died) 2005 (4) RCR (Civil) 68 (P&H). In the light of above observations of Hon'ble Punjab and Haryana High Court, the respondents-defendants though denied the relationship with the appellant-plaintiff, but failed to prove this fact by producing any cogent and convincing evidence. As such, the Wills in question cannot be treated as genuine document and therefore, after the death of Hari Kishan alias Ram Kishan and Sant Lal, all the legal heirs became owners in equal share by virtue of natural succession. However, the learned Trial Court has failed to discuss this suspicious circumstance while passing the impugned judgment and decree. The issue regarding amount of Rs.70 lacs lying deposited in the bank account of Hari Kishan alias Ram Kishan is also subject to the validity of the Wills or natural succession. Not even this while deciding the case, the learned Trial Court has also not given specific findings as to whether Hari Kishan was known by two names i.e one Hari Kishan and second Ram Kishan, as there were signatures of testator at the time of execution of the Wills in question, whereas at the time of registration of the same, the testator put the thumb impression. To decide these controversies, more evidence is required to be produced by the parties to arrive at a just decision of the case. However, the learned trial failed to give findings on these material aspects of the case and chose a short cut to scuttle the real controversy, thereby leaving the parties in lurch and as such the plea of learned counsel for the appellant-plaintiff that learned Trial Court had not appreciated the evidence in a proper prospective, is well founded and even learned counsel for the respondents-

defendants have also not denied the legal issue of natural succession referred above. Needless to say the Courts are meant to do complete justice between the parties once a dispute is raised and both the parties lead evidence on that dispute. Thus, in the absence of evidence on the aforementioned aspects of the case, the opinion of learned Trial Court regarding genuineness of the Wills is not sustainable in the eyes of law. As such, it is fit case, which is required to be remanded back after setting aside the impugned judgment so that complete adjudication of lis could be decided.”

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.

5. Keeping in view the aforesaid facts, the judgment passed by the First Appellate Court in all the three appeals is set aside. The First Appellate Court is requested to decide the appeals afresh after hearing the learned counsel representing the parties within a period of six months from 18.08.2023. The parties through their learned counsel are directed to appear before the First Appellate Court on 18.08.2023.

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

18.07.2023
rekha

(ANIL KSHETARPAL)
JUDGE

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