

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No.26 of 2017 (O&M)

Date of Order:16.11.2023

Nathi Devi and others

.Appellants

Versus

Surinder (Deceased) through LR's and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. B.S.Mittal, Advocate,
for the appellants.**

**Mr. P.K.Ganga, Advocate
for the respondents.**

ANIL KSHETARPAL, J

1. In this second appeal against the order, the plaintiffs assail the correctness of the remand order passed by the First Appellate Court while requesting the trial court to decide the suit afresh after granting adequate opportunities to the parties to lead evidence.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief are required to be noticed.

3. The dispute between the parties is with regard to succession of property left behind by late Sh. Gopi Ram, who had one son and 9 daughters. His only son died during the lifetime of late Sh. Gopi Ram. The contesting defendants are the grand sons from the pre-deceased son of late Sh. Gopi Ram as well as his widow. It is the case of the plaintiffs, who are the daughters of late Sh. Gopi Ram that the property is ancestral and coparcenary property. They filed a suit for declaration with a consequential

relief of permanent injunction. Defendant Nos. 1 to 5 filed a joint written statement claiming that late Sh. Gopi Ram executed a registered valid will dated 30.01.2001, in favour of Sh. Sultan, Sh. Surender and widow Smt. Phulo Devi. Subsequently, Smt. Phulo Devi also died and bequeathed her share to Sh. Sultan and Sh. Surender.

4. After the written statement was filed, the learned counsel representing defendant nos. 1 to 5 pleaded no instructions and therefore the court proceeded ex-parte against the defendants. The trial court on the basis of ex-parte evidence decreed the suit. The defendants filed the first appeal challenging the ex-parte decree.

5. The First Appellate Court has held that the trial court has not recorded sufficient reasons and grounds to decree the suit. The court has also held that the will propounded by the defendants has not been proved. Further, the court found that there is substance in the assertion of the defendants that their counsel informed them that he will intimate them as and when their presence is required, however, no information was given to them. Thus, the First Appellate Court remanded the case back to the trial court for fresh decision.

6. The correctness of the aforesaid order is sought to be questioned by the learned counsel representing the plaintiffs on the ground that such order is beyond the scope of Order XLI Rule 23 and 23-A CPC. He submits that the First Appellate Court, at the most, could have framed an additional issue and sought report from the trial court.

7. On the other hand, the learned counsel representing the respondents (defendants) contends that the defendants are required to be given an opportunity to lead evidence in order to prove the registered will

propounded by them. He further submits that if the evidence of the plaintiffs is not permitted to be challenged in the cross-examination, then the defendants would suffer irreparable loss and injury.

8. In this case, the First Appellate Court has recorded reasons to remand the case back to the trial court as the re-trial of the case was considered necessary on various grounds as elaborated.

9. In fact, in the facts and circumstances of the present case, seeking of report from the trial court would not suffice. With the assistance of the learned counsel representing the parties, this court has also perused the judgment passed by the trial court. In para 11 of the judgment, the court has held as under:-

“The plaintiffs by leading oral as well as documentary evidence have proved their claim which remains on file as un-rebutted and un-challenged”

10. Before recording a finding that the suit property was ancestral in the hands of late Sh. Gopi Ram, it was necessary for the court to analyze the evidence on record. The trial court erred in observing that since the evidence led by the plaintiffs is un-rebutted and un-challenged therefore, the suit is decreed.

11. On the other hand, there is a registered will executed by late Sh. Gopi Ram in favour of children of his pre-deceased son. In such circumstances, this court does not find it appropriate to interfere with the order passed by the First Appellate Court. However, the trial court is requested to make sincere endeavours for the expeditious disposal of the suit, preferably within one year from the date of receipt of the certified copy of this order.

12. With these observations, the revision petition is disposed of.
13. All the pending miscellaneous applications, if any, are also
disposed of.

November 16, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO