

In the High Court of Punjab and Haryana, at Chandigarh**S.A.O. No. 14 of 2018 (O&M)****Date of Decision: 09.08.2023**

Parkash (Deceased) through his Legal Representative

... Appellant(s)

Versus

Wazir (Since Deceased) through his Legal Representatives

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Mani Ram Verma, Advocate
for the Appellant(s).Mr. Manmohan, Advocate
for the respondent.**Anil Kshetarpal, J.**

1. This second appeal has been filed by the plaintiff to assail the correctness of the order passed by the First Appellate Court while remanding the case back to the trial Court.

2. The plaintiff filed a suit for grant of decree of declaration claiming that two registered gift deeds are illegal, null and void. The defendant, while deciding the suit, claimed that previously, the donor executed an agreement to sell, who, thereafter, executed a gift deed in his favour. The trial Court decreed the suit. Before the First Appellate Court, the defendant filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") for permission to lead evidence in order to produce and prove two agreements to sell dated 08.06.2004 and 19.11.2013, a receipt dated 20.04.2014 and execution of an

agreement to sell dated 19.11.2013. The First Appellate Court allowed the

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application for additional evidence without commenting on the merits of the case. However, the judgment and decree passed by the trial Court on 23.05.2014 was set aside while remitting the case back to the trial Court for deciding afresh after permitting the defendant to prove the aforesaid documents.

3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

4. The learned counsel representing the appellant (plaintiff in the suit) contends that there was no ground to allow the application under Order XLI Rule 27 CPC as sufficient opportunities were granted to the defendant to produce his evidence. He further contends that the defendant has failed to fulfill the requirement of Order XLI Rule 27 CPC. In the alternative, he contends that the First Appellate Court erred in remitting the case back to the trial Court without setting aside the judgment and decree after discussing on merits.

5. On the other hand, the learned counsel representing the respondent (defendant in the trial Court) contends that the First Appellate Court, after allowing the application for additional evidence, may either remit the case back to the trial Court or permit the parties to lead evidence at the first appellate stage. He further submits that the First Appellate Court has found that the aforesaid documents are required by the Court to pronounce the judgment.

6. This Court has considered the submissions of the learned counsel representing the parties and perused the paper-book. Order XLI

Rule 47 CPC is divided into three different parts under Clauses “a”, “aa”

and “b”. In fact, Clause “b” is again sub divided into two parts. Clause “b” enables the Appellate Court to permit the production of any document or examination of any witness which may help the Court to pronounce the judgment. The second part of Clause “b” provides that the Appellate Court can allow the application for additional evidence on any other substantial cause. In this case, the Appellate Court has recorded the cogent reasons to allow the application for additional evidence. Such evidence is important for the decision of the case. Even if the defendant was negligent in producing the document, that itself cannot be a ground for the Appellate Court to deny any opportunity to the defendant. Moreover, the First Appellate Court has exercised its discretion which, in the absence of perversity, cannot be interfered with.

7. As regards the next argument of the learned counsel representing the appellant, there is substance. The First Appellate Court can remand the case back to the trial Court either under Order XLI Rule 23 or Rule 23A CPC. Order XL1 Rule 23 CPC is not applicable to the facts of the present case. Order XL1 Rule 23A CPC requires the Court to remand the case after fulfilling the two conditions, namely, the decree passed by the trial Court is reversed in appeal on merits and secondly, a retrial is considered necessary. From the reading of the order passed by the First Appellate Court, it is evident that the impugned order has been passed only because the application for permission to lead additional evidence has been allowed. In these circumstances, the order passed by the First Appellate Court to that extent is set aside. The First Appellate Court shall either permit recording of the evidence or may call for the report from the trial Court.

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8. With the observations made above, the appeal is allowed. The first appeal is restored to its original number in the First Appellate Court. The parties, through their learned counsel, are directed to appear before the First Appellate Court on 31.08.2023.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

August 09, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No