

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-20-2018 (O&M)

Date of Order: 17.07.2023

SANJAY GARG AND ANR

.Appellants

Versus

VINOD AGGARWAL

..Respondent

SAO-21-2018 (O&M)

SANJAY GARG AND ANR

.Appellants

Versus

VINOD AGGARWAL

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sachin Bansal, Advocate, for
Mr. Anil Kumar Aggarwal, Advocate,
for the appellants.

Mr. Harsh Aggarwal, Advocate
for the respondent.

ANIL KSHETARPAL, J

1. These two connected appeals have been filed to assail the correctness of two identical orders passed by the First Appellate Court.

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

3. The plaintiff filed a suit for grant of decree of declaration that the compromise deed executed in the Court of Rent controller and consequent order dated 03.09.2012, is null, void and illegal. The plaintiff continues to be a co-tenant in SCO No.207, Iron Market, Sector 29-D,

Chandigarh. After the issues were framed and the parties were permitted to lead evidence, the suit was dismissed by a detailed judgment dated 20.02.2016.

4. The respondent (plaintiff) filed two identical appeals. The First Appellate Court after finding that the trial court has failed to frame proper issues, ordered framing of the two following additional issues:-

“1A Whether the defendants played fraud upon the Court while seeking ejectment order?OPP

1B Whether the order dated 3.9.2012 passed by Rent Controller is legal and valid?OPP”

5. Only after the framing of the additional issues, the First Appellate Court has set aside the judgment and decree passed by the trial court and remanded the case back to the trial court for recording a finding on the abovesaid additional issues by giving two effective opportunities to each of the parties to lead fresh evidence.

6. The correctness of the aforesaid judgment passed by the First Appellate Court in both the appeals has been challenged before this Court.

7. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

8. The power of the First Appellate Court to remand the case back to the trial court is regulated by Section 107 read with Order XLI Rule 23 and 23-A CPC which are extracted as under:-

“Section 107-Power of Appellate Court-

(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power-

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.”

23. Remand of case by Appellate Court.

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23A-Remand in other cases.- *Where the Court from whose decree an appeal is preferred has disposed of the case otehrwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under Rule 23.”*

5. As per Order XLI Rule 23 CPC, the Appellate Court may remand the case back to the trial court only if the suit has been decided on a preliminary point and the same is reversed in appeal. In the present case, the suit was not decided on a preliminary point.

6. Order XLI Rule 23-A CPC permits the First Appellate Court to

reverse the impugned decree and order re-trial if considered necessary. However, Order XLI Rule 25 CPC permits the First Appellate Court to frame additional issues and refer them for trial to the Court whose decree is subject matter of appeal. Order XLI Rule 25 CPC only permits the First Appellate Court to seek a report on additional issues which may be framed by the First Appellate Court. Under Rule 25 the First Appellate Court is not required to remand a case back to the trial court. The First Appellate Court has not recorded any finding that re-trial of the case is necessary. In the present case, there is a decree in favour of the defendants which confers a valuable right. Such decree cannot be set aside only because some additional issues have been framed by the First Appellate Court. The First Appellate Court should have resorted to the recourse provided under Order XLI Rule 25 of the Code of Civil Procedure.

7. The learned counsel representing the respondent does not dispute the aforesaid legal position.

8. Keeping in view the aforesaid facts and discussion, both the appeals are allowed. The judgments passed by the First Appellate Court are set aside to a limited extent. The appeals shall be restored to its original number on the docket of the First Appellate Court.

9. The trial court is requested to submit a report after granting an opportunity to lead evidence and hearing on the aforesaid two additional issues within a period of 6 months, from today. On receipt of the report, the First Appellate Court shall decide the appeals on merits.

10. Parties through their learned counsels are directed to appear before the trial Court on 07.08.2023.

11. With these observations, both the appeals are disposed of.
12. All the pending miscellaneous applications, if any, are also disposed of.

July 17, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO

Whether reportable :YES/NO