

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

117

2023:PHHC:138340

SAO-58-2017

Date of decision: 30.10.2023

BHAGU RAM (DECEASED) THROUGH LRS

..Appellant

Versus

DHARAM PAL AND ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Peeush Gagneja, Advocate
for the appellant.

Mr. Vaibhav Sharma, Advocate
Ms. Jyoti Sharma, Advocate
for Mr. C.B. Kaushik, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. In this second appeal against the order, the challenge is to the correctness of the order passed by the First Appellate Court while remanding the case back to the trial Court for deciding afresh after impleading Harijan Cooperative Society as a defendant.

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

3. This appeal has been filed by the defendant, who has also filed a counter claim. The respondent (plaintiff) before the trial Court filed a suit for grant of decree of permanent injunction restraining the defendant from dispossessing and interfering into his peaceful possession. As already noticed, the defendant while appearing not only filed the written statement but also filed a counter claim on the ground that he is entitled to the property.

4. The predecessor in interest of the parties late Sh. Kundan Ram

Was a member of Harijan Cooperative Society. Both of them claim that they

are entitled to be substituted as a member of the Society and hence, entitled to cultivate the land. None of the party ever objected to the maintainability of the suit on the ground that the Harijan Cooperative Society has not been impleaded as a party. The trial Court dismissed the suit as well as counter claim. The first appeal was filed. The First Appellate Court has found that the Harijan Cooperative Society was a necessary party. Only on this ground, the First Appellate Court has set aside the judgment of the trial Court and remanded the case to the First Appellate Court. The correctness of the aforesaid order has been challenged in this appeal.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

6. The Appellate Court has the enabling power to remand the case to the First Appellate Court under Order XLI Rule 23 and Order XLI Rule 23A of the Code of Civil Procedure, 1908.

7. Order XLI Rule 23 is applicable if the suit is decided on a preliminary point, which is reversed by the First Appellate Court. In this case, Order XLI Rule 23 is not applicable because the suit was decided on merits.

8. Order XLI Rule 23(A) enables the Appellate Court to remand the case back to the trial Court after the First Appellate Court has reversed the judgment of the trial Court and retrial of the case is found necessary. In this case, the First Appellate Court has not recorded findings that the retrial of the case is considered necessary. The First Appellate Court is entitled to implead the necessary party in the suit. However, it is not necessary to remand the case back to the trial Court only on this ground.

9. The learned counsel representing the respondents failed to draw the attention of the Court to any substantive reason necessitating the First Appellate Court to remand the case back to the trial Court.
10. Keeping in view the aforesaid facts, the impugned order passed by the First Appellate Court is set aside. The appeal filed before the First Appellate Court is restored to its original number.
11. The parties through their counsel are directed to appear before the First Appellate Court on 30.11.2023. The First Appellate Court will proceed with the matter.
12. With these observation, the present appeal is disposed of.
13. All the pending miscellaneous applications, if any, are also disposed of.

October 30th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

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