

2023:PHHC:088867

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

SAO-47-2017 (O&M)
Date of decision: 14.07.2023

Hazara Singh (since deceased) through LRs and others

....Appellants

Versus

Amritpal Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vipin Mahajan, Advocate for the appellants

Mr. H.S.Saini, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

CM-7048-CII-2023

1. Allowed as prayed for, subject to all the just exceptions.

Legal representatives of the deceased respondent no.1, as mentioned in para 2 of the application, are permitted to be brought on record, for the purpose of defending the present appeal.

2. Amended memo of parties is taken on record.

Main case

3. The challenge is to the correctness of the remand order passed by the First Appellate Court while setting aside the judgment and the decree passed by the trial court. In para 18 and 19, the Appellate Court has noticed that the trial court decided the suit in a casual manner. In para 19, the court has observed that the judgment passed by the trial court is required to be supported by sufficient reasons in order to inform the parties. In para 20, the court has referred to Section 107 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). In para 21,

the court held that the objection as to the admissibility of document Ex.D1 is required to be decided by the trial court.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. The power of remand of the Appellate Court is governed by Section 107 read with Order XLI Rules 23 and 23A of the CPC. Rule 23 of Order XLI CPC can be invoked if the suit is decided on a preliminary issue and that issue is reversed in the Appellate Court. Whereas Rule 23 A of Order XLI CPC enables the court to remand the case in all other cases that are not covered under Rule 23. However, before remanding the case back to the trial court, the decree is required to be reversed in appeal and a re-trial is considered necessary.

5. The First Appellate Court is a court of fact and law both. It has the power of re-appreciating the evidence once again. The failure of the trial court to decide the objection with regard to the admissibility of a document could be decided by the First Appellate Court, as it has all the appropriate powers. Moreover, the evidence has already been led by the parties. In such circumstances, the Appellate Court itself should have proceeded to decide the appeal. Unless and until the court comes to a conclusion that the re-trial of the case is necessary, the Appellate Court should desist from remanding the case back to the trial court. On a careful reading of the impugned order, it is evident that the trial court did not record any reason which compelled the court to remand the case back to the trial court in the context of re-trial of the suit.

6. Keeping in view the aforesaid facts, the order of remand is set aside. The First Appellate Court is requested to re-decide the appeal. The parties through their learned counsel are directed to appear before the First Appellate Court on 11.08.2023.

7. Disposed of.

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

14.07.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE