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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-30-2022 (O&M)

Date of decision: 19.07.2024

Mukhtiar Singh

....Appellant

Versus

Ajit Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. K.S.Boparai, Advocate for the appellant

Ms. Shubreet Kaur, Advocate for respondents

ANIL KSHETARPAL, J (Oral)

1. The plaintiff has filed this Second Appeal against the order challenging the order of remand passed by the First Appellate Court.

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

3. The plaintiff filed a suit for possession of the house property measuring 100 sq. yards claiming to be the owner of the property. He also sought declaration that the sale deed of the suit property executed by defendant no.2 on behalf of the plaintiff in favour of defendant no.1, regarding the suit property is illegal, null and void. The trial court decreed the suit on 01.04.2015. The defendants filed the first appeal. The First Appellate Court has culled out the additional following issue and remitted the matter back to the trial court on the ground that the trial court has failed to give its finding separately on each issue:-



“Whether the plaintiff executed the irrevocable power of attorney dated 26.04.1990 in favour of defendant no.2 and also executed agreement dated 09.04.1990 and affidavit dated 09.04.1990 and received RS.1 lac as sale consideration in installments? OPD.”

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. Learned counsel representing the appellant submits that the First Appellate Court itself has recorded a finding that the parties have led sufficient evidence. Hence, there was no requirement to remit the matter back to the trial court. He further submits that the First Appellate Court has failed to take note of the fact that remitting a civil appeal back to the lower court is regulated by Order XLI Rule 23 and Rule 23A of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’).

6. Per contra, the learned counsel representing the respondents submits that in the facts of the case, the additional issue requires adjudication and the First Appellate Court has found multiple errors in the judgment of the trial court. Hence, it was inevitable for the First Appellate Court to remit the matter back to the trial court.

7. This Court has considered the submissions made by the learned counsel representing the parties.

8. Under Order XLI Rule 23 CPC, the appellate court can remand the matter back to the trial court if the lower court has decided the case on the basis of a preliminary point and it has been reversed in appeal. In this case, the situation is entirely different. Another provision that governs remand is Order XLI Rule 23A CPC and the said provision explains the other eventualities permitting the appellate court to remit



the matter back to the lower court. It requires that the appellate court should set aside the findings of the lower court on merits and come to a conclusion that re-trial of the case is necessary. This Court is not questioning the correctness of the additional issue which has been culled out by the First Appellate Court, however, the appellate court could have called upon the parties to lead evidence or could have sought a report from the trial court on the additional issue. However, it was not appropriate for the appellate court to remand the suit to the lower court for fresh decision. The scope and ambit of Order XLI Rule 23 and Rule 23A have been explained in detail in celebrated judgment in **P.Purushottam Reddy and Another v. Pratap Steels Ltd. (2002) 2 SCC 686**, in the following manner:-

“10. The next question to be examined is the legality and propriety of the order of remand made by the High Court. Prior to the insertion of Rule 23A in Order 41 of the Code of Civil Procedure by CPC Amendment Act 1976, there were only two provisions contemplating remand by a court of appeal in Order 41 of CPC. Rule 23 applies when the trial court disposes of the entire suit by recording its findings on a preliminary issue without deciding other issues and the finding on preliminary issue is reversed in appeal. Rule 25 applies when the appellate court notices an omission on the part of the trial court to frame or try any issue or to determine any question of fact which in the opinion of the appellate court was essential to the right decision of the suit upon the merits. However, the remand contemplated by Rule 25 is a limited remand in as much as the subordinate court can try only such issues as are referred to it for trial and having done so the evidence recorded together with findings and reasons therefore of the trial court, are required to be returned to the appellate court. However, still it was a settled position of law before 1976 Amendment that the court, in an appropriate case could exercise its inherent jurisdiction under Section 151 of the CPC to order a remand if such a remand was considered pre-eminently necessary ex debito justitiae, though not covered by any specific provision of Order 11 of the CPC. In cases where additional evidence is required to



be taken in the event of any one of the clause of Sub-rule (1) of Rule 27 being attracted such additional evidence oral or documentary, is allowed to be produced either before the appellate court itself or by directing any court subordinate to the appellate court to receive such evidence and send it to the appellate court. In 1976, Rule 23A has been inserted in Order 41 which provides for a remand by an appellate court hearing an appeal against a decree if (i) the trial court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in appeal and a retrial is considered necessary. On twin conditions being satisfied, the appellate court can exercise the same power of remand under Rule 23A as it is under Rule 23. After the amendment all the cases of wholesale remand are covered by Rule 23 and 23A. In view of the express provisions of these rules, the High Court cannot have recourse to its inherent powers to make a remand because as held in Mahendra v. Sushila (AIR 1965 SC 365 at p.399), it is well settled that inherent powers can be availed of ex debito justitiae only in the absence of express provisions in the Code. It is only in exceptional cases where the court may now exercise the power of remand de hors the Rules 23 and 23A. To wit the superior court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20 Rule 3 or Order 11 Rule 31 of the CPC and hence it is no judgment in the eye of law, it may set aside the same and send the matter back for re-writing the judgment so as to protect valuable rights of the parties. An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23A or Rule 25 of the CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore must be avoided.”

9. Keeping in view the aforesaid facts and the detailed deliberations made in **P.Purushottam Reddy’s case (supra)**, no further discussion is found appropriate. Hence, the appellate court’s order remitting the matter back to the trial court is set aside to that extent only. The first appeal shall stand restored to its original number and the First Appellate Court shall proceed to decide the matter either by permitting the parties to lead evidence or by seeking report from the trial court on the additional issue. The parties through their learned counsels are



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directed to appear before the First Appellate Court, on 20.08.2024. The First Appellate Court is requested to make sincere endeavour for the expeditious disposal of the case, preferably, within a period of six months, from the date the parties enter appearance.

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

19.07.2024
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE