



SAO-20-2024(O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

143

SAO-20-2024 (O&M)
Date of Decision: 13.05.2024

Tej Kaur through LR's and othersAppellants

Versus

Mohinder Kaur@ Guddi through LR's and othersRespondents

CORAM: HON'BLE MR.JUSTICE ANIL KSHETARPAL

Present: Mr. Abhishek Singla, Advocate, with
Ms. Anchal Singla, Advocate, for the appellants.

ANIL KSHETARPAL. J.

- (1) This second appeal against the order passed by the first appellate Court while remitting the case back to the trial Court filed by the defendants.
- (2) Previously also the first appellate Court remitted the matter back to the trial Court, however, in appeal the aforesaid order was set aside while directing the first appellate Court to pass fresh order. Now, a fresh order has been passed which is again assailed by the defendants.
- (3) Heard learned counsel representing the appellants at length with and his able assistance perused the paper book.
- (4) Learned counsel representing the appellant submits that after discussing the case on merits, the first appellate Court has not set aside the judgment and decree passed by the trial Court. He submits that *de novo* trial would commence because the first appellate Court has allowed the

**SAO-20-2024(O&M)**

application under Order 6 Rule 17 of the Code of Civil Procedure, permitting the defendants to amend the plaint.

5. This Court has considered the submissions. In fact, the first appellate Court has taken note of the scope of Order 41 Rule 23-A CPC and Order 41 Rule 25 CPC. The plaintiffs filed suit challenging the transfer deed on the ground that the suit property was ancestral/coparcenary in the hand of defendant No.1. However, it came in evidence that defendant No.1 inherited the property from her husband by virtue of Will, however, the Court neither framed the issue regarding execution of the Will nor called upon defendant No.1 to prove the Will. Furthermore, the first appellate Court found that the plaintiff was entitled to amend the plaint in order to incorporate material facts in the pleadings. The Court found that the proposed amendment is essential for proper decision of the case. First appellate Court has also found that trial court has failed to determine the relief and the question of controversy involved between the parties.

6. Undoubtedly, under Order 41 Rule 23-A of the Code of Civil Procedure, the enabling power to remand the case back to the lower Court is to the exercise only in cases where the requirement of Rule 23A CPC is fulfilled which provides that where the Court sets aside the judgment of the trial Court and forms opinion that the matter is required to be decided afresh. In this case, both the requirements are fulfilled. In this case, it has been found that the trial Court committed multiple errors which vitiated the trial.



SAO-20-2024(O&M)

7. In these circumstances, it is not appropriate for this Court to interfere with the reasoned judgment passed by the first appellate Court and hence the same is dismissed.

13.05.2024
anil

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether Reportable:	Yes/No