



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

SAO-12-2007 (O&M)

Date of decision: 21.05.2024

Akash Chander

....Appellant

Versus

Onkar Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rai Singh Chauhan and
Mr. Rohit Sapehiya, Advocate for the appellant

Mr. R.S.Manhas, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

CM-3644-CII-2024

1. For the reasons stated in the application, the same is allowed and with the consent of the learned counsel representing the parties, the main case is taken on Board for final disposal.

Main case

2. In this Second Appeal against Order, the defendant no.2 assails the correctness of the First Appellate Court's order, remitting the case back to the trial court. The plaintiff's suit for declaration that the sale deed dated 27.01.1994, executed by defendant no.1 in favour of defendant no.2, is null and void and also for the specific performance of the agreement to sell dated 18.05.1992 was disposed of while granting relief of refund of earnest money to the plaintiff. The relief of declaration that the sale deed dated 27.01.1994 was dismissed.



3. The First Appellate Court has remanded the case back to the trial court with the observation that there is no specific finding with reference to khasra no.379 (11kanal 10 marla).

4. After having addressed the arguments at length, the learned counsel representing the parties have come to a consensus. It is agreed that the order of the First Appellate Court remanding the case back to the trial court should be set aside while requesting the First Appellate Court to decide the matter afresh. Moreover, this Court has also examined the judgment of the First Appellate Court. It does not fulfill the twin requirement of Order XLI Rule 23A of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') which requires that the decree passed by the trial court should be set aside and retrial is considered necessary. In **P.Purushottam Reddy and Another v. Pratap Steels Ltd. (2002) 2 SCC 686**, the Supreme Court has explained the aforesaid provision 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.”



5. Keeping in view the aforesaid consensus, the impugned order passed by the First Appellate Court on 30.11.2006 is set aside, while restoring the first appeal to its original number. The parties, through their counsels, are directed to appear before the First Appellate Court on 08.07.2024.

6. Disposed of.

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

21.05.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE