



112 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-51-2015 (O&M)

Date of decision: 23.07.2024

Mohinder Ram (since deceased) through his LRs

....Appellant

Versus

Bhupinder Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.H.K.Aurora, Advocate for the appellant

Mr. Kanwal Goyal, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

1. The plaintiff assails the correctness of the First Appellate Court's order remitting the matter back to the trial court for fresh decision after framing additional issues. The trial court decreed the plaintiffs suit for the grant of decree of declaration with a consequential relief of possession. The defendant filed first appeal. The First Appellate Court found that the following two additional issues are required to be culled out:-

“1. Whether the defendant no.2 Bhupinder Kaur is bonafide purchaser for consideration without any notice of earlier sale deed? OPD (2)

2. Whether the plaintiff is estopped from filing the present suit on the principle of acquiescence? OPD (2)”

2. On this basis alone, the First Appellate Court has remitted the matter back to the trial court for setting aside the judgment and decree passed by the trial court.



3. While issuing notice of motion on 22.07.2015, the following order was passed:-

Suit of the plaintiff-appellant for declaration that he is owner of the plot in dispute, was decreed by the trial Court. The lower Appellate Court has remanded the matter by framing additional issues directing the trial Court to determine if defendant No.2 was a bona fide purchaser for consideration without any notice of earlier sale deed and that whether the plaintiff-appellant was estopped from filing the suit on the principles of acquiescence.

Counsel for the plaintiff-appellant (now represented through his LRs) has vehemently contended that the lower Appellate Court has acted illegally in remanding the matter back to the trial Court by setting aside the entire judgment despite the fact that there was sufficient evidence led by both the parties on record, for determination of additional issues framed by the lower Appellate Court as the additional issues framed already formed part of the original issue No.6.

It has also been contended that defendant No.2, a subsequent purchaser had appeared as a witness in support of the plea which forms subject matter of the re-framed issues.

The controversy raised by the counsel for the appellant is whether in the light of Order 41 Rule 24 CPC, there was sufficient evidence on record to determine finally, the controversy in the additional issues framed or whether the lower Appellate Court under Order 41 Rule 25 CPC should have referred the matter to the trial Court for a finding on the additional issues by permitting the additional evidence.

Notice of motion for 2011.2015.

Meanwhile, an interim order is passed that it will be open to the trial Court to prepare a report on the additional issues framed by the lower Appellate Court. Legal approach which is required to be adopted by the Appellate Court will be determined by this Court after hearing the opposite party."

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.
5. 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.”

6. 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. The first appeal shall stand restored to its original number and the First Appellate Court shall proceed to decide the matter. Needless to observe that if a report has been submitted by the trial court pursuant to the interim order passed by this Court, the First Appellate Court will take it into consideration while deciding the appeal. The parties through their learned counsels are directed to appear before the First Appellate Court, on 20.08.2024.

7. The appeal stands allowed.

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

23.07.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE