

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

Reserved on: - 14.08.2024
Pronounced on: 21.08.2024

I. SAO-102-2017

RAM KRISHAN (SINCE DECEASED) AND OTHERS

... APPELLANTS

Vs.

FATEH SINGH (NOW DECEASED) AND OTHERS

.... RESPONDENTS

II. SAO-103-2017

RAM KRISHAN AND OTHERS

... APPELLANTS

Vs.

**HARYANA STATE THROUGH
COLLECTOR HISAR DISTRICT HISAR AND OTHERS**

.... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Amit Jain, Sr. Advocate, with
Mr. Anupam Mathur and Mr. Parit Aggarwal, Advocates,
for the appellants.

Mr. Rahul Sharma, Advocate and
Dr. Parveen Hans, Advocate
for respondent Nos.1(i), (ii) in SAO-102-2017 and
for respondent Nos.5(i) & (ii) and 13(i) & (ii) in SAO-103-2017

DEEPAK GUPTA, J.

Suit filed by plaintiffs Ram Kishan and others seeking a decree of declaration besides prohibitory & mandatory injunction with respect to the disputed land, was decreed by the trial Court on 31.10.2012 against defendants.

2.1 Two appeals were filed against the said judgment by two sets of defendants, one by Haryana State & others and other by Fateh Singh-defendant No.5. By way of the common order dated 25.10.2017, the First Appellate Court disposed of both the appeals by setting aside the judgment & decree of the trial Court and remanded the matter to the trial Court with direction to obtain evidence of both the sides and then give its findings on each and every issue.

2.2 It is against the aforesaid order dated 25.10.2017 that plaintiffs have filed the present two appeals.

3.1 The contention of Id. senior counsel appearing for the appellants is that findings on all the issues had been returned by the trial Court, while discussing issue No.1, although it was not specifically mentioned that issues No.2(a), 2(b), 1(a) and 1A were being separately disposed of, which had been additionally framed by the trial Court and so in these circumstances, the order of remand was not justified and that the evidence led by both the parties on the file was there for the Appellate Court to consider and decide the issues.

3.2 Id. counsel has referred to a decision of Hon'ble Supreme Court rendered in ***Arvind Kumar Jaiswal (D) through LR Vs. Davendra Prasad Jaiswal Varun, SLP (C) No.9172 of 2020, decided on 13.02.2023*** and decisions of this Court rendered in ***SAO No.9 of 2017 titled as Rajinder Kumar Vs. Lalit Mohan Rajprohat and others, decided on 05.08.2024*** and ***SAO No.49 of 2016 titled as Siri Niwas and another Vs. Smt. Kailash Devi, decided on 15.07.2024.***

4.1 On the other hand, Id. advocates appearing for the respondents justified the order of remand as passed by the Appellate Court and submit that specific finding on all the issues are required to be given by the trial Court. Id. Advocates have relied upon a decision of Hon'ble Supreme Court rendered in ***J. Balaji Singh Vs. Diwakar Cole and others, (2017) 14 Supreme Court Cases 207*** and ***Shahid Hussain Vs. Mahtaba Begum and others, SLP (Civil) Nos.4698-4700-2018, decided on 12.09.2023.***

4.2 Id. counsels for the respondents also contend that in the present appeals, as maintainable under Clause (u) of Rule 1 of Order XLIII of the CPC, no substantial question of law within the meaning of Section 100 CPC arises and that only the legality and correctness of the remand order passed by the Lower Appellate Court can be examined and nothing beyond that.

5. Submissions of both the sides have been considered.

6. As the paper-book would reveal, the trial Court initially issued following issues on 06.06.2008: -

"1. Whether the plaintiffs are entitled to the relief of declaration as well as

injunction (prohibitory & mandatory) with respect to the disputed land on the ground so mentioned in the plaint? OPP

2. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD

3. Whether the suit is bad for want of notice under Section 80 CPC? OPD

4. Relief.”

Following additional issues were framed on 1.05.2010, 01.12.2010 and 14.03.2012:-

01.05.2010

2(a) Whether the suit of the plaintiff is not maintainable in the present form? OPD

2(b) Whether the civil court has no jurisdiction to try and entertain the present suit under Section 26 of Haryana Ceiling on Land Holdings Act, 1972? OPD”

01.12.2010

1(a) Whether the plaintiff is entitled to the possession of suit property? OPP”

14.03.2012

1A Whether plaintiffs are entitled to get possession of the suit land back according to their respective shares in the land in question as mentioned in the plaint? OPP.”

7. It is no doubt true that finding has been returned by the trial Court while discussing issue No.1 only; whereas issues No.2 & 3 as framed on 06.06.2008 were disposed of as not pressed for and it has not been separately mentioned that issue No.2(a), 2(b), 1(a) and 1A are being separately dealt with but it has rightly been pointed out by Id. Senior counsel for the appellants, by taking this Court through the judgment of the trial Court that all those issues were thoroughly considered by the trial Court under the discussion on issue N: 1.

8. Perusal of para No.15 of the judgment dated 31.10.2012 would reveal that after referring to contentions of both the sides and authorities relied by them, Id. trial Court extensively dealt with issue of maintainability and jurisdiction of the Civil Court and ultimately reached to the conclusion that Civil Court had the jurisdiction to entertain the suit and that suit could not be dismissed by holding that jurisdiction of the Civil Court was barred under the Haryana Ceiling on Land Holdings Act, 1972 and for that reason the suit was not maintainable. As such, the

contention of Id. counsel for the respondents that no finding on the jurisdiction of the Civil Court or maintainability was not given, is without any merit.

9. Similarly, during further discussion on issue N: 1, the trial Court has given its finding regarding the ownership of the plaintiffs of the suit property and that they were to be delivered possession of the suit land within a period of one month. Thus, all the aspects as mentioned in the additional issues were duly dealt with while discussing issue No.1 and simply for the reason that additional issues were not distinctively dealt with, it cannot be said that no finding had been given on those issues.

10. The question is as to whether in the aforesaid facts and circumstances, the Appellate Court should have remanded the matter. In the case of **Arvind Kumar Jaiswal (d) Thr. LR (supra)**, it has been observed by Hon'ble Supreme Court as under: -

“In our opinion, the impugned judgment of the High Court remanding the case to the trial court by relying upon Section 33 and Order XX of the Code of Civil Procedure, 1908 (the 'Code'), overlooks the provisions of Rule 23, 23A, 24 and 25 of Order XLI of the Code. An order of remand prolongs and delays the litigation and hence, should not be passed unless the appellate court finds that a re-trial is required, or the evidence on record is not sufficient to dispose of the matter for reasons like lack of adequate opportunity of leading evidence to a party, where there had been no real trial of the dispute or there is no complete or effectual adjudication of the proceedings, and the party complaining has suffered material prejudice on that account. Where evidence has already been adduced and a decision can be rendered on appreciation of such evidence, an order of remand should not be passed remitting the matter to the lower court, even if the lower court has omitted to frame issue(s) and/or has failed to determine any question of fact, which, in the opinion of the appellate court, is essential. The first appellate court, if required, can also direct the trial court to record evidence and finding on a particular aspect/issue in terms of Rule 25 to Order XLI, which then can be taken on record for deciding the case by the appellate court.”

11. While discussing the scope of Order XL1 Rules 23, 23A and 25 of the CPC regarding power of the Appellate Court to remand, it has been held by Hon'ble Supreme Court in **J. Balaji Singh (Supra)** as under: -

“14. There are three provisions in the Code which deal with the power of the Appellate Court to remand the case to the Trial Court. These provisions are Order 41 Rules 23, 23-A, and 25.

14.1 So far as Order 41 Rule 23 is concerned, it enables the Appellate Court to remand the case to the Trial Court when it finds that the Trial Court has disposed of the suit upon a preliminary point. The Appellate Court in such cases is empowered to direct the Trial Court to decide all the issues on evidence on record.

14.2 So far as Rule 23-A is concerned, it enables the Appellate Court to remand the case to the Trial Court when it finds that though the Trial Court has disposed of the suit on all the issues but on reversal of the decree in appeal, a re-trial is considered necessary by the Appellate Court.

14.3 So far as Rule 25 is concerned, it enables the Appellate Court to frame or try the issue if it finds that it is essential to the right decision of the suit and was not framed by the Trial Court. The Appellate Court in such case may, accordingly, frame the issues and refer the same to the Trial Court to take the evidence and record the findings on such issues and return to the Appellate Court for deciding the appeal. In such cases, the Appellate Court retains the appeal to itself.”

12. In view of legal position as above, the Appellate Court has the power to remand the matter in certain specified circumstances. Further, this is no doubt true that an appeal against an order of remand passed by the Lower Appellate Court under Order XLI Rule 23 or 23A of CPC is appealable under Order 43 Rule 1(u) CPC and the limited power of the High Court is to examine only the legality and correctness of the remand order of the First Appellate Court and not beyond that, as has been held by Hon’ble Supreme Court in the case of ***J. Balaji Singh (supra)***, but in the present case, the question to be considered by this Court is as to whether the Appellate Court should have remanded the matter to the trial Court without looking into the trial Court judgment and without even discussing as to whether the findings on all the issues, framed initially or additionally, were given by the trial Court or not while discussing issue No.1. Simply because the trial Court did not mention that specific finding was being given on distinct issues, it could not be concluded by the appellate Court that no finding on those issues had been given, particularly when it has been rightly pointed out by Id. Senior counsel for the appellant that Id. trial Court extensively dealt with those aspects as covered under the additional issues, while discussing under issue No.1.

13. In the aforesaid facts and circumstances, the impugned order dated 25.10.2017 as passed by the First Appellate Court, cannot be sustained. The said order is hereby set aside. The matter is remanded back to the concerned First Appellate Court with the direction to decide both the appeals as filed by the defendants/respondents afresh by looking into the evidence as already on the record. Both the parties to the respective appeals are directed to appear before the First Appellate Court on 03.09.2024 for further proceedings.
14. Both the appeals are disposed of accordingly.
A photocopy of this order be placed on the file of connected case.

21.08.2024

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No