



119 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-1-2018(O&M)
Date of decision : 23.07.2024

**Bhupinder Singh (Since deceased)
through his LRS and others**

...Appellants

Vs.

Jaspreet Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Achin Gupta, Advocate and
Mr. Karan Bansal, Advocate
for the appellants.

Mr. Gudarshan S. Sidhu, Advocate
for the respondent.

ANIL KSHETARPAL, J. (Oral)

1. In this second appeal, the defendants assail the correctness of the First Appellate Court's order remitting the matter back to the trial Court for fresh decision.

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, a minor filed a civil suit for the grant of decree of declaration with consequential relief of permanent injunction claiming that the suit property is ancestral joint Hindu family property and he is the owner of 1/4th share in the property. Consequently, the transfer deed dated 07.07.2011, is illegal. The defendants contested the suit. Ultimately, vide judgment and decree dated 05.04.2014, the trial Court dismissed the suit. The plaintiff filed



first appeal.

4. During the pendency of the appeal, he filed three applications (i) under Order I Rule 10 of the Code of Civil Procedure, 1908 (ii) under Order VI Rule 17 of the Code of Civil Procedure, 1908 and (iii) Under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). The First Appellate Court dismissed the application under Order I Rule 10 of the CPC, whereas, partly allowed applications under Order Rule VI and Rule 17 of the CPC and Order XLI Rule 27 of the CPC. Simultaneously, the Court remitted the matter back to the trial Court for fresh decision. The procedure followed by the First Appellate Court is against the Rule enshrined in Order XLI Rule 23 and 23-A of the CPC. The enabling power of the First Appellate Court to remit the matter back to the trial Court is regulated by Order XLI Rule 23 and 23-A of the CPC. Order XLI Rule 23 of the CPC is not applicable in the present case because the trial Court did not decide the case on preliminary point. Hence, Order XLI Rule 23-A of the CPC shall be applicable, which requires that the First Appellate Court should set aside the findings of the Lower Court on merits and comes to a conclusion that the re-trial of the case is necessary.

5. The scope and ambit of the aforesaid provision has been explained by the Hon'ble Supreme Court in '**P.Purushottam Reddy and Another v. Pratap Steels Ltd**'. (2002) 2 SCC 686.

6. In view of the aforesaid fact, the impugned order passed by the First Appellate Court is set aside to the extent by which the matter was remitted back to the trial Court. The first appeal is restored to its original

number.

7. Needless to observe that this Court has not expressed any opinion on the merits of the case and the Court while finally deciding the suit shall decide it independently.
8. The parties through their counsel are directed to appear before the First Appellate Court on 20.08.2024.
9. The appeal stands allowed.
10. All the pending miscellaneous applications, if any, are also disposed of.

23.07.2024
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(ANIL KSHETARPAL)
JUDGE

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