



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

123

SAO-90-2018 (O&M)
Date of decision: 19.07.2024

PARAMJIT SINGH & ANR. ..Appellants

Versus

STATE OF PUNJAB & ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

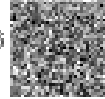
Present: Mr. Shailendra Jain, Sr. Advocate
with Ms. Richa Sharma, Advocate
for the appellants.

Mr. Kanav Singla, AAG, Punjab
for respondent No.1 and 2.

Mr. Sanjeev Soni, Advocate
and Mr. Sarthak Soni, Advocate
for respondent No.3.

ANIL KSHETARPAL, J(Oral)

1. In this second appeal against the order, the plaintiffs assail the correctness of the First Appellate Court's order remitting the suit back to the trial Court for fresh decision.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. The plaintiffs filed a suit for possession of the land measuring 68 kanal and 18 marlas on the basis of being reversioner and on the basis of a decree dated 28.01.1969, and for recovery of damages by way of mesne profits for use and occupation of the land. The suit was filed against the Municipal Corporation, Pathankot, State of Punjab and Secretary, Ministry of Health and Social Welfare, Punjab. Originally, the suit was dismissed on 11.08.2014. The plaintiffs filed the first appeal, which was allowed and the



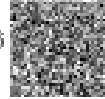
trial Court was directed to decide the matter afresh. Pursuant thereto, the trial Court framed the following two additional issues:-

“1. How much area of the land in dispute has been acquired by the defendants and how much has been left out from acquisition? OPP
2. If additional issue No.1 is decided in favour of the plaintiffs whether the plaintiffs are entitled for preliminary decree for possession by way of partition? OPP”

4. Ultimately, after the parties lead their evidence on the additional issues, the trial Court decreed the suit on 27.10.2016. It was found that the State of Punjab had acquired 40 kanal and 13 marlas land comprised in Khasra no.34 Min, West-South, 37, 38/1, 40, 44 and 48 for construction of a Civil Hospital. Thus, the Civil Court held that the plaintiffs are entitled to the remaining area i.e. 28 kanal and 5 marlas. The decree for recovery of mesne profits was also passed in their favour.

5. The State of Punjab filed the first appeal. The First Appellate Court has once again remitted the matter back to the trial Court while observing that the impugned judgment shows lack of application of mind as the exact area and the unauthorized occupants have not been identified. The Court has held that there is lack of clarity as to whether the remaining area is in occupation of hospital or private corporation or some private person. Thereafter, the Court was required to fix the responsibility with respect to the payment of mesne profits with respect to each of the respondents. The First Appellate Court came to a conclusion that a ‘Halqa Kanungo’ or a competent person having the revenue record was required to be appointed to visit the property and give a report.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.



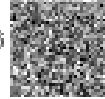
7. The learned Senior counsel representing the appellant submits that the impugned order passed by the First Appellate Court is unsustainable in the eyes of law as the impugned order is against the provisions of Order XLI Rule 23 A of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'). While elaborating, he submits that out of 68 kanal and 18 marlas, an area measuring 40 kanal and 13 marlas has admittedly being acquired by the Government. The plaintiffs are entitled to the remaining area. He submits that the suit was filed in the year 2008. The plaintiffs have been deprived of the possession during all these years without any justification.

8. Per contra, the learned counsel representing the respondents jointly state that the institutions/individuals who are in possession of 28 kanal and 5 marlas, are yet to be identified and therefore, the order of remitting the matter back to the trial Court is justified.

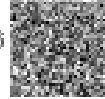
9. In SAO-57-2023, titled as "Abdul Quddoors Vs. Ajit Singh (since deceased) through legal representatives and another", decided on 08.01.2024, this Court has examined the scope and enabling power of the Appellate Court to remand the case back to the trial Court. The relevant paras are extracted hereunder:-

"3. From the reading of the order passed by the First Appellate Court, it is evident that the Court has found that in para Nos. 23 and 24 of the trial Court judgment, the onus was wrongly shifted on the defendants and the First Appellate Court allowed the application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"). In fact, the scope of Order XLI Rule 23 and 23A CPC has been explained by the Supreme Court 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

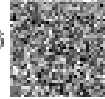


made by the High Court. Prior to the insertion of Rule 23A in Order 41 of the Code of Civil Procedure by CPC Amendment Act 1976, there were only two provisions contemplating remand by a court of appeal in Order 41 of CPC. Rule 23 applies when the trial court disposes of the entire suit by recording its 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.”

*4. The learned counsel representing the respondent No.1 submits that the Supreme Court, in **Shivakumar and Others v. Sharanabasappa and Others (2021) 11 SCC 277**, has held that in appropriate cases, it is permissible for the Appellate Court to remand the case back to the trial Court. In **Shivakumar’s case** (supra), the Court has held that the power of remanding the case back to the trial Court is required to be exercised sparingly and in the exceptional cases. It should not be exercised in routine. The Appellate Court can remand the case back to the trial Court either under Order XLI Rule 23 or 23A CPC. Order 23A provides that the Appellate Court can only remand the case back to the trial Court if the decree is reversed in appeal and retrial of the case is considered necessary. The First Appellate Court has all the powers to record additional evidence or seek report from the trial Court after framing an additional issue or allowing the application for additional evidence. Efforts should always be made by the Appellate Court to decide the case on merits, rather than remanding the case back to the trial Court because it entails delay and the decree, which has been passed, is set aside without going deep into the matter.”*



10. It is evident that neither the First Appellate Court has set aside the judgment of the trial Court on merits nor it has come to the conclusion that the re-trial of the case is necessary. The first reason assigned by the First Appellate Court needs no further deliberation because it is open to the First Appellate Court to reappraise the evidence in the facts and circumstances of the case. If the First Appellate Court found that there was lack of application of mind by the trial Court, the First Appellate Court could have decided the case in accordance with the law, however, that itself is not a good ground for remitting the matter back to the trial Court.

11. With regard to the second reason, it may be noted that the Municipal Corporation as well as Department of Health are the instrumentalities of the State. If Municipal Corporation is in occupation of some of the area, the decree would be passed against the Municipal Corporation. On the other hand, if the Health Department is in possession of the area in excess of the land acquired, the decree can be passed against the Health Department. In these circumstances, there was no occasion for the First Appellate Court to remit the matter back to the trial Court. It is not the case of the Municipal Corporation or the State of Punjab that some private individuals are in possession.

12. As far as the requirement of appointing a revenue official to demarcate the area and identify the exact area is concerned, the Appellate Court has sufficient power to appoint a local commissioner. For that purpose, it is not necessary to remit the matter back to the trial Court.

13. Keeping in view the aforesaid discussion, the appeal is allowed. The impugned order passed by the First Appellate Court is set aside while restoring the appeal to its original number.



- 14. The First Appellate Court is requested to take effective steps for decision of the appeal in accordance with law.
- 15. If the First Appellate Court comes to a conclusion that a local commissioner is required to be appointed or there is some lack of clarity in the judgment passed by the trial Court, it can seek clarification or report from the trial Court in this regard.
- 16. The parties through their learned counsel are directed to appear before the First Appellate Court on 14.08.2024.
- 17. All the pending miscellaneous applications, if any, are also disposed of.

July 19th, 2024

Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No