

SAO-42-2022(O&M)
Date of decision : 19.07.2024

Vs.

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Mr. Parveen Sharma, Advocate with
Mr. Abhimanyu Singh, Advocate for
respondents No. 5 to 8.

ANIL KSHETARPAL, J. (Oral)

1. In this second appeal, the plaintiffs assail the correctness of the First Appellate Court's order remitting the matter back to the trial Court. The plaintiffs filed a suit for declaration with a consequential relief of permanent injunction claiming to be owner in possession of the property comprised in Ahata Nos. 142 and 143. The suit was decreed against which the defendants filed the appeal. During the pendency of the appeal, an application was filed by the respondents No. 5 to 8 for impleadment on the ground that they are necessary party to the litigation. In fact, the respondents No. 5 to 8 claimed to be the heirs of Sh. Khem Ram, who is alleged to be the owner of Ahata No. 142. In the facts and circumstances of the case, the First Appellate Court impleaded respondents No.5 to 8 and remanded the case back to the trial Court for fresh decision.

2. Heard the learned counsel representing the parties at length and



with their able assistance perused the paper-book.

3. Learned counsel representing the appellants while submitting that the impugned order passed by the First Appellate Court does not fulfill the parameters of Order XLI Rule 23-A of the Code of Civil Procedure, 1908, prays for its setting aside. He contends that even if the contesting respondents were impleaded as the defendants, there was no justifiable reason to remit the matter back to the trial Court.

5. *Per contra*, the learned counsel representing the respondents No. 5 to 8 submits that these respondents are required to be given opportunity to contest the suit.

6. This Court has considered the submissions made by the learned counsel representing the parties.

7. In this case, re-trial of the suit shall be necessary, particularly, when respondents No. 5 to 8 have been found to be necessary party and impleaded for the first time during the pendency of the appeal. They are required to be given opportunity not only to file their written statement but also to cross-examine the plaintiffs’ evidence as well as to produce their own evidence.

8. Hence, no ground to interfere is made out.

9. The appeal stands dismissed.

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

(ANIL KSHETARPAL)
JUDGE

19.07.2024

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Whether speaking/reasoned :
Whether Reportable :

Yes
Yes

No
No