

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

SAO-7-2023 (O&M)

Date of decision : 22.04.2025

Satpal @ Sant Pal and others

...Appellants

Vs.

Maan Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Alok Mittal, Advocate
Mr. Shubham Thakur, Advocate
for the appellants.

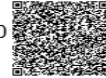
Mr. Abhimanyu Singh, Advocate
Mr. Rajbir Singh, Advocate
for the respondents.

ANIL KSHETARPAL, J. (Oral)

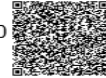
1. The defendants assail the correctness of the First Appellate Court's order remitting the matter back to the trial Court for fresh decision after framing additional issue.

2. In this case, the dispute is with regard to genuineness and validity of a registered Will dated 24.08.1974 propounded by the plaintiffs. Before the First Appellate Court, they filed two applications, one for permission to lead additional evidence in order to examine the attesting witness of the Will and second for framing additional issue. The First Appellate Court allowed both the applications and proceeded to frame the following additional issue:-

"Whether Mutation No. 1560 dated 17.06.1998, sanctioned on the basis of inheritance of Ahejan widow of Bahal Singh @ Bhal Singh, is illegal, null and void?OPP "



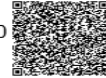
3. The correctness of the order passed by the First Appellate Court is challenged by the defendants.
4. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.
5. Learned counsel representing the appellants submits that the plaintiffs (respondents herein) are filling up a lacuna in their case while examining the alleged attesting witness of the Will. He submits that the Court should not have remitted the matter back to the trial Court for fresh decision.
6. *Per contra*, learned counsel representing the respondent submits that in order to do substantive justice the attesting witness of the Will is required to be examined. He submits that it is a registered Will executed by Sh. Bahal Singh @ Bhal Singh. The plaintiffs are the children of Sh. Bahal Singh @ Bhal Singh from second wife and the defendants are children from first and second wife both.
7. With respect to the discretion exercised by the First Appellate Court while allowing application for additional evidence, this Court does not find it appropriate to interfere in such discretion because the Will is registered and it is required to be proved by examining at least one attesting witness in terms of Section 68 of the Indian Evidence Act, 1872. The First Appellate Court is a Court of fact and law both and the application for additional evidence can be allowed. Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC), is laid down in three parts, which includes Order 41 Rule 27 (1) (Clause b) of the CPC, which enables the appellate Court to *suo moto* permit examination of additional evidence. In this case, the examination of attesting



witness will be vital to the decision of the case.

8. The First Appellate Court has erred in remitting the matter back to the trial Court after framing additional issue and permitting the plaintiff to lead additional evidence. Order 41 Rule 25 of the CPC enables the Appellate Court to seek report after framing additional issue. The Court also has an option to call upon the parties to lead evidence. However, the order remitting the matter back can be passed only on fulfilling the requirements of Order Rule 41 Rule 23-A of the CPC, which has been explained by the Hon'ble 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 XLI 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 XLI 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 XLI 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.”

9. It is evident that the First Appellate Court has neither set aside the judgment of the trial Court on merits nor it has formed an opinion that re-trial of the case is necessary.
10. Hence, the impugned order passed by the First Appellate Court to the limited extent of remitting the matter back to the lower Court is set aside and the first appeal is restored to its original number. The Court will proceed in accordance with Order 41 Rule 25 of the CPC.
11. The parties through their learned counsel are directed to appear before the First Appellate Court on 23.05.2025.
12. All the pending miscellaneous applications, if any, are also disposed of.

22.04.2025
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(ANIL KSHETARPAL)
JUDGE

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