



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

SAO-11-2019 (O&M)

Date of decision : 21.02.2025

Jaswant Singh and another

...Appellants

Vs.

Paramjit Kaur and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anupam Bhardwaj, Advocate
for the appellants.

Mr. M.K. Dogra, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (Oral)

1. On 11.09.2024, the following order was passed:-

"One Niranjn Singh, was the owner of property in dispute to the extent of ½ share. He executed a General Power of Attorney dated 12.04.1984 in favour of Ajaib Singh. On the basis of that GPA, Ajaib Singh sold the suit property in favour of his sons- defendant Nos. 1 & 2 Jaswant Singh and Sukhwinder Singh (appellants herein) by way of sale deed dated 16.01.1991. More than 20 years later from the execution of the sale deed, Paramjit Kaur (the daughter of Niranjn Singh) filed the suit assailing the validity of the GPA dated 12.04.1984 as well as his sale deed dated 16.01.1991, claiming right, title and interest in the suit property along with her other siblings/defendant Nos.5 to 7. Although the trial Court dismissed the suit on the ground of limitation apart from other grounds, the first Appellate Court on the appeal filed by the plaintiff remanded the matter to the trial Court by way of the impugned order dated 03.11.2018 by directing the trial Court to dispose of an application under Order 12 Rule 8 CPC which had been moved by the plaintiff during pendency



of the suit for production of General Power of Attorney and sale deed.

Learned counsel for the appellants has drawn attention towards the fact that as observed by the Appellate Court itself that the application under Order 12 Rule 8 CPC was disposed of on 17.12.2014 itself. That order was never challenged by the plaintiff. Still the Appellate Court, by ignoring the issue of limitation, has remanded the matter on the pretext that application under Order 12 Rule 8 CPC was required to be decided on merits.

Learned counsel for the respondents- plaintiffs seeks adjournment so as to inspect the trial Court record and obtain necessary instructions in this regard.

Adjourned to 05.02.2025.

In the meantime, trial Court record be also called."

2. The defendants in this second appeal have assailed the correctness of the First Appellate Court's order remitting the matter back to the lower Court is assailed by the defendants. The plaintiff filed a suit for grant of decree of declaration to the effect that she alongwith defendants No. 5 to 7 are the owners in possession to the extent of half share in the suit land. She also alleged that Sh. Niranjan Singh did not execute any power of attorney in favour of Sh. Ajaib Singh and therefore, the sale deed executed by Sh. Ajaib Singh as attorney of Sh. Niranjan Singh on 16.01.1991 is illegal, null and void. The suit filed by the plaintiff was dismissed by an elaborate judgment passed by the trial Court. As noticed in the order dated 11.09.2024, the First Appellate Court set aside the trial Court's judgment only on the ground that an application filed under Order 12 Rule 8 of the Code of Civil Procedure, 1908 has not been properly decided.



3. The scope and ambit of the enabling powers of the First Appellate Court to remit the matter back to the Lower Court 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.”

4. It is evident that the enabling power of the Appellate Court to remand the case back is regulated by Order 41 Rule 23 and 23-A of the Code of Civil Procedure, 1908 (CPC). In this case, Order 41 Rule 23-A of the CPC will be applicable. The *sine qua non* for the Appellate Court to remit the matter back to the Lower Court is based on two pre-conditions i.e. the judgment of the trial Court is set aside on merits and retrial of the case is considered necessary. In this case, the First Appellate Court has failed to fulfill both the requirements. The First Appellate Court is a Court of fact and law both. It has power to allow any application which has been wrongly decided by the trial Court. However, this cannot be the only reason to remit the matter back and the Court is obligated to follow the mandatory provisions laid down by the statute.
5. Consequently, the appeal is allowed. The impugned order passed by the First Appellate Court on 03.11.2018, is set aside. It shall be open to the First Appellate Court to proceed in accordance with law.
6. The parties through their learned counsel are directed to appear before the First Appellate Court on 10.03.2025.
7. All the pending miscellaneous applications, if any, are also disposed of.

	(ANIL KSHETARPAL)	
	JUDGE	
21.02.2025		
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	Whether Reportable :	Yes No