

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

SAO-17-2023 (O&M)
Date of decision: 20.01.2025

OM DUTT ALIAS OM DUTT SHARMA

..Appellant

Versus

YASHPAL AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aditya Jain, Advocate
Mr. Rajat Singla, Advocate
for the appellant.

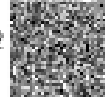
Mr. Vikrant Rana, Advocate
for respondent No.1 to 8.

Mr. Vinay Gaur, Advocate
for respondent No.11 and 12.

ANIL KSHETARPAL, J(Oral)

1. This second appeal has been filed by defendant No.3 against the First Appellate Court's order remitting the matter back to the trial Court for fresh decision after complying with provisions of Order I Rule 8 of the Code of Civil Procedure, 1908 (in short 'CPC'), which provide for publication of notice if the plaintiffs filed suit in a representative capacity and the interest of various other individuals are likely to be effected.

2. As many as ten plaintiffs filed suit for grant of decree of declaration with consequential relief of possession and injunction claiming to be proprietors of '*Patti Bhagat Singh*' of Village Kasan. As many as three defendants were impleaded as party on the ground that the fore-father of defendant No.1 and 2 were earlier performing and rendering religious service, which was a condition precedent to continue as a '*Dholi*' and defendant No.1 and 2 have neither rendered any religious service nor they



are in possession of the same. In fact, they have transferred the property in favour of defendant No.3.

3. This suit was filed by the plaintiffs on behalf of entire body of proprietors of Village Patti Bhagat Singh, hence, the Court was required to issue notice in accordance with Order I Rule 8 of CPC.

4. The trial Court dismissed the suit. The plaintiffs filed first appeal, which has already been remitted back to the trial Court.

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

6. It is evident that the First Appellate Court has remitted the matter back to the trial Court in order to complete a procedural formality, which could be complied with even at the appellate stage. The First Appellate Court could have directed the plaintiffs to get the notice published as required under Order I rule 8 of CPC. If pursuant to the aforesaid publications certain more persons enter appearance, the Appellate Court at that stage could have examined the matter in a pragmatic manner. The enabling power of the Appellate Court to remit the matter back to the trial Court is regulated by Order XLI Rule 23 and 23A of CPC. The Courts have held that Appellate Court should not remit the matter back to the lower Court unless it becomes necessary.

7. Keeping in view the aforesaid facts, the appeal is allowed. The order of the First Appellate Court is set aside. The appeal is restored to its original number.

8. The First Appellate Court is directed to call upon the plaintiffs to publish the notice and then proceed in accordance with law.



9. The parties through their counsel are directed to appear before the First Appellate Court on 17.02.2025.

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

January 20th, 2025
Ay

(ANIL KSHETARPAL)
JUDGE

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