



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 16 of 2022 (O&M)

Date of Decision: 21.03.2025

Anil Kumar Gupta

... Appellant(s)

Versus

Laxmi Narayan Gupta

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Naresh Kaushik, Advocate
for the appellant(s).

Mr. Akshay Jindal, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The plaintiff assails the correctness of the First Appellate Court's order remitting the matter back to the Trial Court for fresh decision.
2. The plaintiffs filed a suit for possession claiming his father executed a Will in his favour which was decreed after a prolonged trial spanning over a period of five years. The Trial Court passed an elaborate judgment while decreeing the suit. The defendants filed the first appeal. The First Appellate Court found multiple errors in the judgment passed by the Trial Court and after finding that the important issue No. 1A has not been framed and decided, the First Appellate Court remitted the matter back to the Trial Court.
3. The scope and ambit of Order XLI Rule 23 of the Code of Civil Procedure, 1908 (hereinafter referred to as "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.”

3. The First Appellate Court can remit the matter back to the Trial Court only after setting aside the judgment of the Trial Court on merits and after forming an opinion that retrial of the case is necessary. In this case, the First Appellate Court has neither set aside the reasoning given by the Trial Court on merits nor formed an opinion that retrial of the case is necessary.

4. The learned counsel representing the appellant has drawn the attention of the Court to paras 22 and 23 of the First Appellate Court’s judgment. This Court is not going into the aforesaid aspect. However, it was not appropriate for the First Appellate Court to remit the matter back to the Trial Court for fresh decision particularly when the First Appellate Court is a Court of fact and law both. It is permissible for the First Appellate Court to permit the parties to amend their pleadings or lead further evidence. It is also open to the First Appellate Court to cull out the fresh issues and call upon the parties to lead their evidence.

5. With the observations made above, the order passed by the First Appellate Court to the extent of remitting the matter back to the Trial Court is set aside and the direction is issued to the First Appellate Court to decide the matter afresh. The parties, through their learned counsel, are directed to

appear before the First Appellate Court on 22.04.2025.

6. With the observations made above, the present appeal stands disposed of.

7. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

March 21, 2025
“DK”

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