



SAO-72-2019

1

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.204

SAO-72-2019

Date of decision : 10.02.2025

Gurjant Singh and another

..... Appellants

VERSUS

Surjit Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Grover, Advocate, for the appellants.

Mr. Ashok Batra, Advocate, for respondent No.1.

None for respondent No.2.

ANIL KSHETARPAL, J. (Oral)

1. In this second appeal, the first appellate Court's order passed on 21.09.2019 remitting the matter back to the trial Court is assailed by the defendants.

2. Plaintiff-Surjit Singh son of Hakam Singh filed a suit for possession which was dismissed on 28.01.2015. He filed an appeal. The learned first appellate Court has held that proper demarcation of the property has not been carried out, hence, the matter was remitted to the trial Court with a direction to appoint Local Commissioner. Plaintiff had also filed application for filing additional evidence to this effect.

3. The enabling power of the Appellate Court to remit the matter back to the lower Court is regulated and controlled by Order 41 Rule 23 and 23-A of the Code of Civil Procedure, 1908. While interpreting these provisions, the Hon'ble Supreme Court in **P. Purushottam Reddy and Another v. Pratap Steels Ltd. (2002) 2 SCC 686**, has laid down as under:--

"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 clauses 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 (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 rewriting 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 first appellate Court has neither set aside the judgment of the trial Court on merits nor found retrial of the case necessary. In absence of these two findings, the appellant Court erred in remitting the matter back. In any case, the Local Commissioner can be appointed by the appellate Court.
5. Keeping in view the aforesaid facts, the impugned order is set aside and the appeal filed by the plaintiff is restored to its original number. Parties through their counsel are directed to appear before the first appeal Court on 10.03.2025. It shall be open to the first appellate Court to proceed in accordance with law.

(ANIL KSHETARPAL)
JUDGE

10.02.2025
anil