

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

SAO-56-2016 (O&M)
Date of decision: 30.04.2025

KARAM SINGH @ RAM SINGH

..Appellant

Versus

DHARAM SANSTHA LOH LANGAR GURUDWARA SAMADH & ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harnek Singh Gill, Advocate
Mr. Ritesh Tomar, Advocate
for the appellant.

Mr. Ranjit Saini, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. On 08.08.2016, the following order was passed:-

“Counsel for the appellant inter alia contends that the parties have already adduced the evidence in respect of the Will dated 29.07.2002 set up by the appellant/plaintiff and Will dated 20.08.2003 set up by the respondents/defendants, therefore, there was no requirement to frame any additional issues. It is further submitted that even if the Court of appeal thought of framing of specific issues on the question of Will, the Court at best could call for a report on additional issues from the trial Court but that cannot be taken as a ground to set-aside the judgment and decree passed by the trial Court and remit the matter for adjudication afresh, keeping in view the provisions of Order 41 Rules 25 and 26 of the Code of Civil Procedure.

Notice of motion to respondent No.1.

Mr. Ranjit Singh Saini, Advocate, who is present in Court, accepts notice on behalf of respondent No.1 and prays for time to make submissions.

Adjourned to 24.10.2016.

Operation of the impugned order shall remain stayed till the next date of hearing”



2. The enabling power of the Appellate Court to remit the matter back to the lower Court is regulated by Order XLI Rule 23 and 23A of the Code of Civil Procedure, 1908, which 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



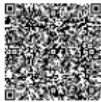
of wholesale remand are covered by Rule 23 and 23A. In view of the express provisions of these rules, the High Court cannot have recourse to its inherent powers to make a remand because as held in Mahendra v. Sushila (AIR 1965 SC 365 at p. 399), it is well settled that inherent powers can be availed 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. In this case, the First Appellate Court has neither set aside the elaborate judgment passed by the trial Court nor remitted the matter back after coming to conclusion that retrial of the case is necessary. In fact, the First Appellate Court has remitted the matter back only on the ground that specific issue with regard to the Will has not been framed. The First Appellate Court is the last Court of fact and law both. It is entitled to modify the existing issues or frame additional issues, however, this cannot be ground to remit the matter back for deciding afresh after setting aside the judgment of the lower Court.

4. Keeping in view the aforesaid discussion, the impugned order to the extent of remitting the matter back to the lower Court is set aside and the First Appellate Court is requested to proceed in accordance with law.

5. The parties through the learned counsel are directed to appear before the First Appellate Court on 26.05.2025.

6. With these observations, the appeal is disposed of.



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

April 30th, 2025
Ayub

(ANIL KSHETARPAL)
JUDGE

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