

**SAO-88-2015(O&M)
and other connected case**

2025 PHHC 026767



**202-1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1.SAO-88-2015(O&M)

Mool Raj

..Appellant

Versus

Kewal Singh (since deceased) through his LRs and others

..Respondents

2.SAO-4-2016(O&M)

Sajjan Kumar and others

..Appellants

Versus

Smt. Bala Rani and others

..Respondents

Date of decision: 24.02.2025

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajender Kumar, Advocate
for Mr. D.R.Punia, Advocate for the appellants
in SAO-4-2016

Mr. Munish Gupta, Advocate
Mr. Paras Kukkar, Advocate for the respondent-plaintiff

ANIL KSHETARPAL, J. (Oral)

1. With the consent of the learned counsel representing the parties, these two connected second appeals filed against the First Appellate Court's order for remitting the matter back to the lower court shall stand disposed of by this common order.

2. The appellants in both the appeals were defendants in a plaintiff's suit for the grant of decree of declaration that the suit land is ancestral, joint Hindu and coparcenary property and the sale deeds executed



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defendants contested the suit. The trial court decreed the suit vide judgment and decree dated 27.10.2010 against which two separate appeals were filed by two separate defendants. The First Appellate Court has allowed the plaintiff's application for permission to lead additional evidence and set aside the judgment and decree passed by the trial court while remitting it back to the lower court.

3. The scope and ambit of Order XLI Rule 23 and 23-A 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



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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. Though it is permissible that the First Appellate Court to allow the application for additional evidence, however, the order remitting the matter back to the lower court can be passed only in rare and exceptional cases. As per Order XLI Rule 23 A CPC the judgment passed by the lower court should be reversed and if re-trial of the case is considered necessary only then the order remitting the case back to lower court is required to be passed. In this case, both the conditions laid down by aforesaid provision have not been fulfilled. Neither the First Appellate Court has reversed the



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judgment and decree by any critical analysis of the impugned judgment nor the court has formed an opinion that re-trial is considered necessary.

5. Hence, the impugned order passed by First Appellate Court is set aside to a limited extent i.e remitting the matter back to the lower court. The parties through their learned counsels are directed to appear before the First Appellate Court on 12.03.2025. The First Appellate Court will either permit the parties to lead their evidence before it or it may seek report from the lower court.

6. Disposed of.

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

**(ANIL KSHETARPAL)
JUDGE**

24.02.2025

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No