



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-71 of 2017 (O&M)
Date of Order:13.01.2025

Gulab Singh (since deceased) through his LRs

.Appellant

Versus

Harbans Lal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitin Jain, Advocate
Ms. Vanshika Sharma, Advocate
for the appellant.

Mr. Ashwani Gaur, Advocate
for the respondents.

ANIL KSHETARPAL, JUDGE (Oral)

1. This second appeal against the order remitting the matter back to the trial Court has been filed by legal representatives of the plaintiff(s). The plaintiff filed a suit for declaration that he is the owner in possession of 1/4th share out of total land measuring 94 Kanals and 18 Marlas, which was previously owned by Smt. Para (grandmother of the plaintiff). The suit was decreed by a detailed judgment passed by the trial Court on 31.10.2012.

2. The defendants filed first appeal, which, as already noticed, has been accepted while remitting the matter back to the trial Court.

3. On 25.08.2017, while issuing notice of motion, the following order was passed:-

“Learned counsel for the appellant contends that as per oral gift, mutation No.392 was sanctioned on 19.11.1930, vide which entitlement in respect of land belonging to Smt. Para was devolved upon Smt. Chawli and Sheo



Chand to the tune of half share each. After the death of Smt. Chawli, the property devolved upon LRs of Sheo Chand and Gulab as Sheo Chand had died prior to the death of Smt. Chawli. Plaintiff Gulab was entitled to 1/4th share of the total estate devolved upon Smt. Chawli and Sheo Chand. Trial Court dealt with issue No.1 in respect of estate of Smt. Para viz-a-viz the relationship of defendants No.1 to 7 and therefore, issue No.3 was not pressed by the plaintiff as the onus was fastened upon the plaintiff to prove the said issue. The issue of bona fide purchaser in terms of issue No.2-A was also adverted to with reference to the statement of learned counsel for the defendants and issue was answered accordingly. The plea of limitation was also considered by the trial Court in para No.21 of the judgment and the trial Court came to the conclusion that the suit filed with the allegations of fraud was not barred by limitation as the limitation started from the day on which the fraud was detected. The lower Appellate Court while misconstruing issue No.3 put the onus of the same on the defendants, whereas it was factually wrong as per order dated 12.06.2009 when relevant issues were framed by the Court in which onus of issue No.3 was on the plaintiff. In respect of issue No.2-A, learned counsel for the defendants made a statement at the bar that the defendants were not interested to lead any evidence in respect of issue No.2-A, therefore, findings to the contrary recorded by the lower Appellate Court were totally unsustainable. The issue of limitation was decided by the trial Court in para No.21 of the Judgment, therefore, all the three grounds of remand of the case are claimed to be totally unsustainable.

Notice of motion for 21.11.2017.

Trial Court is directed to adjourn the proceedings beyond the date fixed by this Court.”



4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

5. 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 it 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 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.”

6. It is evident that the first Appellate Court has erred in noticing that the onus of issue No.3 was wrongly placed upon the defendants. Perusal of Para 31 of the judgment passed by the trial Court’s judgment proves that burden to prove issue No.3 was on the plaintiff.

7. The second reason assigned by the first appellate court is to the effect that defendant No.8 has not been granted an opportunity to lead evidence to prove that he was a bonafide purchaser.

8. Learned counsel representing the appellant while referring to the order dated 30.10.2023, passed by the trial Court submits that defendant No.8 was given an opportunity to lead evidence but he stated that he does not want to lead evidence.

9. Similarly, the First Appellate Court was incorrect in observing that no issue with regard to limitation has been framed by the trial Court. The learned counsel representing the appellant submits that though no specific issue was framed, however, the trial Court decided the aspect of the suit having been within the prescribed limitation in Para 21. These facts are not disputed by the learned counsel representing the respondents.

10. Keeping in view of the aforesaid facts and discussion, the impugned order passed by the First Appellate Court is set aside while restoring the appeal to its original number.

11. The First Appellate Court is directed to decide the appeal in

accordance with law.

12. The parties through their counsel are directed to appear before the First Appellate Court on 10.02.2025.

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

(ANIL KSHETARPAL)
JUDGE

January 13, 2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No