

Date of decision : 02.05.2025

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Bhagyashri Setia, Advocate for
Mr. Vibhav Jain, Advocate
for the appellant(s).



Mr. Aayush Gupta, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (Oral)

1. With the consent of learned counsel representing the parties, five connected second appeals against the identical order passed by the First Appellate Court in five separate appeals, shall stand disposed of by this common order.
2. In order to comprehend the issues involved in the present case, relevant facts, in brief, are required to be noticed.
3. The plaintiff (appellant) claims to be the grandson of late Sh. Girdhari Lal. He claims that Sh. Girdhar Lal executed a Will in his favour and hence, he is exclusive owner of the property. On the other hand, defendants (respondents) herein claim that during his life time Sh. Girdhari Lal executed five registered sale deeds in their favour in the year 1987. Sh. Girdhari Lal died in the year 1995.
4. The suit was filed on 16.07.2010.
5. The trial Court upon analyzing the plaint, written statement and the replication framed the following issues:-

"1. Whether plaintiff is entitled to the relief of Declaration that he is in possession of the suit property? OPP

2. Whether the plaintiff is entitled to the relief of declaration that the alleged sale deed dated 10.04.1987 is illegal forged document?OPP

3. Whether the plaintiff is entitled to the relief of declaration qua the mutation no.3016 on the basis of



sale deed is invalid?OPD

4. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP

5.Subject to fining of issues no.1 to 3, whether plaintiff is already entitled of the relief of joint possession in land?OPP

6. Whether the plaintiff has no locus standi to file the present suit? OPD

7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD

8. Relief."

6. Ultimately, five suits filed by the plaintiffs were decreed. The defendants filed five appeals, which have been remitted back to the trial Court for fresh decision after framing the following additional issue:-

"Whether the sale deed registered on 15.4.1987 by Girdhari Lal in favour of Sarabjit Singh son of defendants No.1 and 4 is the result of fraud and impersonation? OPP."

7. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

8. Learned counsel representing the appellant(s) submits that the defendants failed to produce and prove the sale deeds allegedly executed by Sh. Girdhari Lal in their favour. She further submits that the additional issue framed by the Appellate Court is covered by issue No.2, already framed by the trial Court.

9. On the other land, learned counsel representing the respondent submits that in this case re-trial of the case is necessary because the defendants also filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC) for permission to lead additional evidence in order to



produce and prove the registered sale deeds in their favour. He submits that the moment the First Appellate Court remitted the matter back they did not press their application.

10. The scope and ambit of Order 41 Rule 23-A of the Code of Civil Procedure, 1908(CPC), permitting the Appellate Court to remand the case back to the Lower Court has been explained by the Hon'ble 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 XLI 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 XLI 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 XLI 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.”

11. In this case, Order 41 Rule 23-A of the CPC shall be applicable, which requires the Appellate Court to set aside the judgment of the trial Court on merits and remit the matter back only after recording a finding that re-trial of the case is necessary. If the Appellate Court comes to a conclusion that an additional issue is required to be framed then the procedure as laid down under Order 41 Rule 25 of the CPC is required to be followed, which mandates that on framing additional issue the First Appellate Court would either seek report from the trial Court on the additional issue so framed or call upon the parties to lead evidence before the First Appellate Court.

12. It is evident that the trial Court failed to frame proper issues. Order 14 of the CPC requires that the issues are required to be framed on the basis of proposition asserted by one party and denied by other. Each proposition of fact and law should result in framing separate and distinct issue. In fact, a wrong practice is being followed by the trial Courts. The Presiding Judges do not apply their mind while framing the issues, which are important for the decision of the case. This Court has repeatedly directed the trial Court to frame proper



issues, however, there is no improvement.

13. Keeping in view the aforesaid discussion, the impugned order passed by the First Appellate Court is set aside to a limited extent of remitting the matter back to the trial Court. The remaining observations made by the First Appellate Court are not disturbed. First of all, the First Appellate Court will decide the application filed by the defendants for permission to lead additional evidence and thereafter, proceed in accordance with Order 41 Rule 25 of the CPC.

14. The parties through their learned counsel are directed to appear before the First Appellate Court on 29.05.2025.

15. The appeals are disposed of.

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

02.05.2025

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No