

**(2012) 12 P&H CK 0151**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** S.A.O. No. 17 of 2012

Charanjit Singh Sekhon

APPELLANT

Vs

Jagjit Singh and Others

RESPONDENT

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**Date of Decision:** Dec. 11, 2012

**Citation:** (2013) 1 RCR(Civil) 554

**Hon'ble Judges:** L.N. Mittal, J

**Bench:** Single Bench

**Advocate:** Jatinder Singh, for the Appellant; S.S. Salar, Advocate, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

L.N. Mittal, J.

Suit filed by respondent No. 1-plaintiff has been dismissed by the trial court vide judgment and decree dated 12.08.2008. In first appeal preferred by the plaintiff, learned lower appellate court, vide judgment dated 23.01.2012, has remanded the suit to trial court for fresh decision because issues No. 12 and 13 had not been decided by the trial court. The trial court has also been directed to give opportunity to lead evidence afresh to both the parties and then to decide all the issues afresh. Judgment and decree of the trial court have been set aside. Feeling aggrieved, defendant No. 1 has filed this Second Appeal from Order.

I have heard counsel for the parties and perused the case file.

Counsel for the appellant contended that without setting aside the findings of the trial court on other issues, the suit could not have been remanded. It was also contended that report could be obtained from the trial court regarding findings on issues No. 12 and 13 (which had not been decided by the trial court). It was also canvassed that opportunity to lead evidence afresh also could not have been granted while remanding the suit on the aforesaid ground.

2. I have carefully considered the aforesaid contentions and find considerable merit therein. The suit could not be remanded merely because the trial court failed to

record findings on issues No. 12 and 13 regarding estoppel and locus standi of the plaintiff to file the suit. Moreover, judgment and decree of the trial court could not have been set aside and suit could not have been remanded without setting aside the findings of the trial court on other issues. Opportunity to lead fresh evidence could also not be granted to the parties. As regards issues No. 12 and 13, which were left undecided by the trial court, the lower appellate court, without remanding the suit, could have called for report on the said issues from the trial court.

3. In view of the aforesaid circumstances, I find that the impugned judgment of the lower appellate court is illegal and suffers from jurisdictional error. There was no occasion for remanding the suit to the trial court.

4. Accordingly, the instant Second Appeal from Order is allowed. Impugned judgment dated 23.01.2012 passed by the lower appellate court is set aside. First appeal preferred by the plaintiff is restored to the files of the lower appellate court for fresh decision in accordance with law after seeking report from the trial court on issues No. 12 and 13.

5. Parties are directed to appear before the lower appellate court on 09.01.2013. Counsel for respondent No. 1-plaintiff stated that he may be granted liberty to file application for additional evidence. I need not express any opinion on the same. If and when any such application is moved, the same shall be dealt with by the lower appellate court without being influenced by any observation in the instant order.