



2026:DHC:5034



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 12th February, 2026

Pronounced on: 1st June, 2026

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RSA 195/2023 & CM APPL. 52771/2023

1. RADHEY BEHARI LAL SAXENA

S/o Late Sh. Mukat Behari Lal
R/o 3/8 Roop Nagar, Delhi-11007.

2. BIPIN BEHARI LAL SAXENA

S/o Late Sh. Mukat Behari Lal
R/o 38, Cooperage Crescent,
Richmond Hill, Ontario,
L4C9L6 (Canada)
Through his Attorney
Sh. Radhey Behari Lal Saxena

.....Appellants

Through: Mr. Shekhar Dasi, Mr. Mohd Talha,
Mr. Ayush Dassi, Mr. Deepesh
Kasana and Mr. Divyansh Malhotra,
Advocates

versus

1. RAJ KUMAR SAXENA (Deceased)

S/o Late Raghunandan Parsad
R/o 23-D, Old Anarkali, Near Radha Puri
Krishna Nagar, Delhi-110051.

2. PRABHA SAXENA

W/o Sh. Raj Kumar Saxena
R/o 23-D, Old Anarkali, Near Radha Puri
Krishna Nagar, Delhi-110051.

3. DINESH SAXENA

S/o Late Raghunandan Parsad



R/o 23-D, Old Anarkali, Near Radha Puri
Krishna Nagar, Delhi-110051.

4. **ANSHUL SAXENA**

S/o Dinesh Saxena

R/o 23-D, Old Anarkali, Near Radha Puri
Krishna Nagar, Delhi-110051.

5. **SUDHIR SAXENA (deceased)**

S/o Late Sh. Raghunandan Parsad

R/o 278, Shakti Khand-3

Indirapuram, Ghaziabad (U.P)

6. **PRATEEK SAXENA**

S/o Sudhir Saxena

R/o 278, Shakti Khand-3.

Indirapuram, Ghaziabad (U.P).

.....Respondents

Through: Mr. Virendra Singh Chaudhary and
Mr. Vineet Kumar Aggarwal,
Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present ***Regular Second Appeal*** has been preferred by the Appellants/Defendants assailing the judgment dated 25.08.2023 passed by the learned ADJ-02, whereby the judgment and decree dated 05.05.2017 passed by the learned Civil Judge in a Suit for perpetual injunction and recovery of Rs.1,80,000/- along with interest @ 12% per annum from the date of institution till realization, **was set aside** and the Suit was remanded back to the learned Trial Court, for fresh adjudication.

2. **The Plaintiff/ Appellant filed a Suit No. 198/2014** for recovery for



perpetual injunction and for recovery of Rs 1,80,000/- with interest @ 12% per annum from the date of institution of the suit till realization.

3. The **brief facts** as stated in the plaint, are that the Plaintiffs/Appellants, namely Radhey Behari Lal Saxena and Bipin Behari Lal Saxena, claimed that they were inducted as tenants in respect of immovable property bearing Municipal No. 5483 along with mezzanine floor on the ground floor and Municipal No. 5484, situated on the first floor at Dhanvir Ashram, Gandhi Market, Sarai Hafiz Banna, Sadar Bazar, Delhi (*hereinafter referred to as the "suit property"*), by the owners thereof, who were minors at the relevant time, acting through their father and guardian Hafiz Ahmed Jamal and their guardian Mrs. Farhat Jahan Begum, *with effect from 01.02.1964 at a monthly rent of Rs.198/-*. It was further stated that the prevailing rate of rent subsequently ***stood enhanced to Rs.440/- per month***.

4. A Rent Note dated 09.02.1964 for a period of 11 months, was executed in favour of the owners/minor landlords and they paid rent through their father, Hafiz Ahmed Jamal, who issued acknowledgments, in respect thereof. The Plaintiffs/Appellants stated that *the owners/landlords of the suit property were Akhtar Jamal, Akram Jamal, Azhar Jamal, Surraya Jamal, Zohra Jamal, Nargis Jamal and Shella Jamal*.

5. It was further stated that the original Rent Deed was executed and signed by the Plaintiffs/Appellants, whereas the acknowledgment thereof was signed by Hafiz Ahmed Jamal, father of the landlords, on 17.02.1964. According to the Plaintiffs/Appellants, the original Rent Deed was thereafter, handed over to Hafiz Ahmed Jamal, who in turn delivered the original acknowledgment receipt to the Plaintiffs/Appellants in token thereof.



6. According to the Rent Note, the Plaintiffs were authorized and entitled to sub-let or give on license or lease any portion or part of the tenanted premises.

7. It was averred that Defendant No.2, Prabha Saxena, is the wife of Defendant No.1, late Raj Kumar Saxena; *Defendant Nos. 3 and 5, Dinesh Saxena and late Sudhir Saxena respectively*, are the brothers of Defendant No.1; and *Defendant Nos. 4 and 6, Anshul Saxena and Prateek Saxena*, are the sons of Defendant Nos. 3 and 5 respectively. The Plaintiffs/Appellants alleged that the aforesaid Defendants, had unlawfully trespassed into the suit property, interfered with their business activities and caused irreparable loss and injury to them.

8. The Plaintiffs averred that the verandah shown at Point “A” in the Site Plan, comprises a compound enclosed by almirahs on all sides, whereas the portion shown at Point “B”, admeasuring approximately 30’ × 6’, is an open terrace/verandah. The Mezzanine Floor has been depicted at Point “C” in the Site Plan. It was stated that portions marked “A” and “C” were being utilized for storage of goods belonging to businessmen, who visit Delhi on a daily basis. The goods and belongings of such businessmen, are kept under the supervision and custody of the Plaintiffs, and upon completion of their business activities, the owners took back their respective goods. In consideration thereof, *watch and ward charges* are paid to the Plaintiffs through Plaintiff No.1, since Plaintiff No.2 resides in Canada.

9. It was further averred that certain customers of the Plaintiffs also conduct sale of goods in the open spaces marked “A” and “C” and pay daily license charges, to the Plaintiffs for such use. The Plaintiffs stated that there are in total 49 almirahs in the premises, out of which almirah Nos. 35 and 40



are large almirahs, while the remaining 47 are comparatively smaller in size. The entry point to the premises has been shown at Point “D” in the Site Plan, where two gates are situated, one after the other. It was specifically pleaded that access to the premises, is exclusively through Sadar Bazar and from no other side; the entire property being otherwise surrounded by adjoining properties. The almirahs, according to the Plaintiffs, are intended to be let out to businessmen visiting Delhi from outside, and the tenancy/license arrangement in respect thereof, varies from long-term, short-term, to daily basis, depending upon the nature of occupation and the rent/license fee payable.

10. In the year 1980, Shri Bipin Behari Lal Saxena/Plaintiff No.2 went to Canada and settled there. Afterwards, the affairs are being managed by Plaintiff No.1/Radhey Behari Lal Saxena.

11. It is contended by the Appellants/ Plaintiffs that the *Defendant No.1/Raj Kumar Saxena* was employed by Plaintiff No.1, from 01.04.1980. His duty was to watch on the goods of the people who would place the same in the compound and open terrace and allow the traders to sell their merchandise at those places and to collect the license fees from the people, on the day to day basis. He was not entitled to take away the money, so collected. He was only an employee of Plaintiffs and had no right, title and interest in the Suit property.

12. It was further averred by the Appellants/Plaintiffs that Defendant No.1 subsequently started misconducting himself and acting in violation of the terms and conditions of his employment. It was alleged that, out of greed, Defendant No.1 began misappropriating the amounts collected by him, instead of handing over the same to Plaintiff No.1. In particular, on



17.02.2007, Defendant No.1 allegedly retained a sum of Rs.17,000/-, being the amount collected by him over the preceding three months, and failed to remit the same to Plaintiff No.1.

13. It was further stated that Defendant No.1 left the workplace on the pretext of being unwell, but thereafter, neither returned to work nor handed over the aforesaid amount collected by him.

14. Subsequently, Defendant Nos. 2 to 6, who are relatives of Defendant No.1, also began visiting the suit property, without any lawful authority or entitlement. It was alleged that they started collecting money from the customers of the Plaintiffs without permission and appropriating the same for themselves. Upon Plaintiff No.1 objecting to such conduct, the Defendants allegedly extended threats of dire consequences, against him.

15. It was further stated that the wife of Defendant No.1, namely Defendant No.2, started confronting Plaintiff No.1 and created disturbances at the premises, and subsequently Defendant No.1 also joined Defendant No.2, in such acts.

16. It was further pleaded that apprehending police intervention against their alleged unlawful acts, **Defendant No.1, Raj Kumar Saxena, instituted Civil Suit No. 73/2012 seeking a decree of Perpetual Injunction.** The Suit was contested by Plaintiff No.1 and ultimately ***was dismissed, vide judgment dated 30.10.2012*** by the learned Civil Judge, wherein it was held that Defendant No.1 had no right, title or interest in the suit property.

17. The Plaintiffs further claimed that despite dismissal of the aforesaid Suit, Defendant No.1, in collusion and connivance with the other Defendants, continued to trespass into the premises of the Plaintiffs and unlawfully collect rent and other charges, from the customers/occupants of



the suit property. It was claimed that on account of such unauthorized acts of the Defendants, *the Plaintiffs suffered losses estimated at Rs.5,000/- per month.*

18. Consequently, the *Plaintiffs instituted the present suit for Perpetual Injunction, for restraining the Defendants from entering into the suit property and also sought recovery of a sum of Rs.1,80,000/- along with interest @ 12% per annum, from the Defendants.*

19. **Defendant Nos. 1 and 2, in their Written Statement,** raised *preliminary objections* that the Suit was *barred by limitation* and was bad for *non-joinder of necessary parties*. It was further contended that the Plaintiffs *had failed to seek a Declaration regarding their status and rights in respect of the suit property*. Additionally, the Suit was *barred under Sections 16 and 17 of the Delhi Rent Control Act*, as the Plaintiffs were placing reliance upon an alleged Rent Deed without filing its certified copy, as mandated under law.

20. It was further asserted by the Defendants that, under law, any authority granted by a landlord to a tenant for induction of sub-tenants or for collection of rent on behalf of the landlord, is required to be in writing. The Defendants contended that the Plaintiffs were relying solely upon an alleged Rent Deed, though the same was not admitted by them. It was further averred that the said Rent Deed was vague and indefinite, inasmuch as it did not specify the exact duration of tenancy and merely mentioned that the period was less than one year.

21. According to the Defendants, even if the said document were assumed to be genuine, it had lapsed in the year 1965 itself, and thereafter, no written authority or consent had ever been granted by the alleged owners, in favour



of the Plaintiffs, either to induct sub-tenants or to collect rent, on behalf of the alleged landlords.

22. ***On merits***, the Defendants denied the entire case of the Plaintiffs. However, it was admitted that the Defendants had earlier instituted *Suit No. 73/2012 seeking Permanent and Mandatory Injunction, which was decided on 30.10.2012*. It was further contended that the suit property, as described by the Plaintiffs, was not in consonance with the Site Plan annexed to the Rent Deed dated 17.02.1964.

23. The Defendants further asserted that late Sh. Raghu Nandan Prasad, father of Defendant No.1 had himself been a tenant in the suit property and had also been separately authorized to collect rent. According to the Defendants, such rights devolved upon the legal heirs of late Sh. Raghu Nandan Prasad by operation of law. Reliance was also placed upon an authority allegedly issued by the Trust Committee of Waqf Hafiz Abdul Khaliq on 04.05.1979, authorizing him for collection of rent.

24. Defendant No.1 thus, claimed that he was in absolute possession of the suit property in his own independent right, title and interest, and that the Plaintiffs had no concern therewith.

25. The Defendants specifically denied that Defendant No.1 had ever been in the employment of the Plaintiffs, with effect from 01.04.1980. It was further denied that Defendant No.1 had no right, title or interest in the suit property. It was contended that the Suit of the Plaintiffs, was liable to be dismissed.

26. The ***Plaintiffs in their Replication***, reaffirmed their assertions, as made in the Plaint.

27. The **Issues were framed vide Order dated 26.07.2014**, as under:



- (i) *Whether the suit of the plaintiff is bad for non-joinder of necessary party as stated in preliminary objection no.1? OPD*
- (ii) *Whether the suit of the plaintiff is barred by principle of res judicata as stated in preliminary objection No.3? OPD*
- (iii) *Whether the suit of the plaintiff is barred by limitation in view of preliminary objection no.8 and 9? OPD*
- (iv) *Whether the plaintiff is entitled for relief of permanent injunction as prayed? OPD*
- (v) *Whether the plaintiff is entitled for recovery of Rs.1,80,000/- along with interest as prayed? OPP*
- (vi) *Relief.*

28. In support of their case, the Plaintiffs examined four witnesses. **PW1, Sh. Radhey Bihari Lal Saxena, i.e., the Plaintiff himself**, reaffirmed and proved the averments made in the plaint.

29. **PW2, Sh. Jitender Kumar, Record Clerk from the Record Room, Civil, Tis Hazari Courts**, produced the judicial record pertaining to Suit No. 73/2012, which had been decided on 30.10.2012.

30. **PW3, Sh. Abdul Aleem**, was examined as a witness to the translated Rent Deed dated 01.02.1964.

31. **PW4, Sh. Joginder Kumar**, produced the record relating to payments made into the account of Hafiz Akhtar Zameel.

32. The Defendants examined **DW1 Dinesh Saxena, Defendant No.3** who deposed on similar lines, as the defence taken in the Written Statement.

33. The **learned Civil Judge**, on appreciation of evidence, **held** that the suit had been instituted by the Plaintiffs in the capacity of tenants against the Defendants, who were alleged to be trespassers in the suit property. It was



observed that the original owners of the property were neither necessary nor proper parties, to the present proceedings and, accordingly, the suit was not bad for non-joinder of necessary parties. The learned Trial Court further held that the Suit was neither barred by limitation nor by the principles of res judicata. It was further observed that *the suit property was a Waqf property.*

34. However, the learned Civil Judge held that the Plaintiffs had failed to place on record any documentary evidence to establish that Akhtar Jamal and others, were the owners of the suit property. The Plaintiffs were also held to have failed to substantiate their claim of tenancy in the suit premises, as the Rent Deed dated 01.04.1964 had not been duly proved, in accordance with law. Furthermore, even as per the said document, the tenancy in favour of the Plaintiffs, was only for a period of 11 months commencing from 01.02.1964, and it did not establish continuation of tenancy, beyond the expiry of the aforesaid period. The learned Trial Court further held that there was no evidence on record to show that the Plaintiffs continued to remain tenants or were in possession of the suit property, thereafter. Consequently, it was held that the Plaintiffs were not entitled to the relief of Perpetual Injunction or recovery of Rs.1,80,000/-. **Accordingly, the suit came to be dismissed.**

35. Aggrieved by the aforementioned suit, ***Regular Civil Appeal RCA DJ171/2016 was filed by the Plaintiffs.*** Learned ADJ held that Defendant No.1 had earlier instituted a Suit No. 73/2012 for Permanent Injunction against the present Plaintiffs/Appellants in respect of the same property. In the said proceedings, the present Plaintiffs, who were Defendants therein, had examined Hafiz Akhtar Jamal as DW-6, whose statement was proved on



record as Ex. PW2/B. The learned First Appellate Court noted that the said witness categorically deposed that he and his brothers were owners of Property Nos. 5483-5484, Sadar Bazar, Delhi, and further admitted that the present Plaintiffs, namely Radhey Bihari Lal Saxena and Vipin Bihari Lal Saxena, were tenants in the suit property. The witness further stated that prior to creation of tenancy in favour of the Plaintiffs, rent in respect of the property was being collected by late Sh. Raghunandan Prasad in the capacity of a Munshi, who had subsequently resigned, whereafter the suit property was let out to the Plaintiffs. He also identified the signatures of his father on the original **Rent Note written in Urdu, which was exhibited as Ex. DW6/1.**

36. The learned First Appellate Court further observed that during the cross-examination of the aforesaid witness, no suggestion disputing his ownership qua the suit property, had been put by Defendant No.1. It was also noticed that the judgment passed in Suit No.73/2012 had attained finality, as no Appeal had been preferred by either side.

37. The learned First Appellate Court held that the admissions made by Defendant No.1 in the earlier proceedings were relevant and material, inasmuch as Defendant No.1 had admitted that he was an employee of Plaintiff No.1 and that his father, late Sh. Raghunandan Prasad, was employed under Hafiz Akhtar Jamal for collection of rent from tenants in the suit property. The learned First Appellate Court concluded that such admissions, coupled with the failure to challenge the ownership of Hafiz Akhtar Jamal during cross-examination, clearly gave rise to an inference that the Defendants had admitted the ownership and landlordship of Hafiz Akhtar Jamal, qua the suit property.



38. The learned First Appellate Court further took note of the fact that the Plaintiffs had proved transfer of various amounts from their account to the account of Hafiz Akhtar Jamal, by producing certificates issued by Indian Overseas Bank. On the other hand, although Defendant No.1 claimed tenancy rights on the basis of an authorization letter dated 04.05.1979 allegedly issued by the Waqf of Hafiz Abdul Khaliq, but no witness from the said Waqf or Trust had been summoned to prove the said document.

39. The learned First Appellate Court further observed that the learned Trial Court had erred in holding that there was no document to establish ownership of Hafiz Akhtar Jamal qua the suit property. It was held that the present proceedings were not in the nature of a Suit for Declaration of title or ownership, but were confined to the relief of Permanent Injunction for restraining the Defendants from trespassing into the suit property and collecting rent from the customers/tenants of the Plaintiffs.

40. The learned First Appellate Court held that the Plaintiffs were only required to establish that the Defendants were trespassers and had no lawful authority to collect rent from the occupants of the suit property.

41. Upon appreciation of the material on record, ***the learned First Appellate Court***, accordingly held that the Plaintiffs had duly proved their entitlement and rights in the suit property in the capacity of tenants, whereas all the Defendants were claiming rights only through late Sh. Raghunandan Prasad, who himself had been admitted to be merely a Munshi collecting rent on behalf of Hafiz Akhtar Jamal. Consequently, the learned First Appellate Court held that the impugned judgment passed by the learned Trial Court was erroneous, having been rendered without proper appreciation of the oral and documentary evidence on record, and therefore



liable to be set aside.

42. However, **the learned First Appellate Court remanded the matter back to the learned Trial Court with directions to rehear final arguments and thereafter, pass a detailed judgment after recording findings on all the issues, in accordance with law.**

43. *Aggrieved, the present Regular Second Appeal has been preferred.*

44. **The grounds of challenge** are that the learned First Appellate Court failed to appreciate that once it had already rendered findings on the merits of the case in the impugned judgment, there remained no occasion or necessity to remand the matter to the learned Trial Court, for a fresh adjudication of all the issues.

45. It was further contended by the Appellant that the present case does not fall within the ambit of Order 41 Rule 23, Rule 23-A or Rule 25 CPC. The suit had not been decided on any preliminary issue, nor had the learned First Appellate Court recorded any finding necessitating a retrial or the taking of additional evidence. Accordingly, it was submitted that the case did not warrant remand to the learned Trial Court, under any of the aforesaid provisions.

46. Furthermore, the case of the Appellants squarely falls within the scope of Order 41 Rule 24 of the CPC, inasmuch as the learned First Appellate Court, in the impugned judgment itself, categorically observed that the Appellants had sufficiently established *a better title qua the suit property than the Respondents*. It was further held that the Respondents had failed to prove their tenancy in respect of the suit property. In view of such categorical findings, if the evidence available on record, was sufficient for final adjudication of the dispute and therefore, instead of remanding the



matter to the learned Trial Court, the learned First Appellate Court should have decided the case finally, on the basis of the evidence on record and the findings returned by it.

47. It is further submitted that the learned First Appellate Court erred in remanding the matter after setting aside the judgment and decree dated 05.05.2017 in its entirety, despite the fact that the First Appeal preferred by the Appellants was confined only to those findings and issues, which had been decided against the Appellants herein, and not against those issues which had already attained finality in their favour.

48. It is submitted that no *cross-appeal or cross-objections* had been filed by the Respondents, challenging the findings rendered in favour of the Appellants. Therefore, even assuming, without admitting, that the learned First Appellate Court possessed the jurisdiction to remand the matter, such remand could at best have been restricted only to the issues which were under challenge, in the First Appeal. However, the learned First Appellate Court exceeded its jurisdiction by remanding even those issues, which were never assailed before it and had already attained finality.

49. Reliance was placed on Shiva Kumar & Ors. vs. Sharanabasappa & Ors. 2021 (11) SCC 277, and also in Sirajudheen vs Zeenath & Ors. 2023 (3) SCALE 348, wherein it was held that the Order of remand, is not to be made in the routine manner by the Appellate Court and it can be made only if some additional evidence is required to be recorded in the case.

50. The substantial questions of law, which arise for consideration, are proposed as under :-

- i. *Whether in terms of power of remand as provided by CPC to the first appellate court under Order 41 Rule 23, Rule 23-A and*



Rule 25 CPC, the first appellate court could have remanded the present case to the trial court?

- ii. *Whether in terms of findings given by the Ld. First appellate court from para-21 to para-28 of the impugned judgment, the present case could have been finally decided by the Ld. First appellate court under Order 41 Rule 24 CPC?*
- iii. *Whether the findings qua the issues that were not under challenge in the first appeal could be set aside by the Ld. first appellate court, more so when there is no cross appeal by respondents herein?*

51. It is, therefore, submitted that the impugned Judgment dated 25.08.2023 of learned ADJ-02, Tis Hazari Courts, Delhi, be set-aside.

52. **Written submissions have also been filed on behalf of the Appellants** in support of and to substantiate the grounds raised in the present Appeal. The submissions contained therein reiterate the averments and contentions urged in the present Appeal.

53. **Written submissions have also been filed on behalf of Respondent Nos. 2, 3 and 4**, setting out the chronology of events that have transpired in the present proceedings. The submissions contained therein further reiterate the averments and contentions advanced in the pleadings and the evidence.

Submissions heard and record perused.

54. The **substantial question of law** is framed by this Court on 20.11.2024, as under:

- i. *Whether the approach adopted by the First Appellate Court under the facts of the present case suffers with material illegality in as much as instead of decreeing the civil suit, the Court*



remitted the matter to the trial court without framing any additional issue.

55. It is an admitted between the parties that neither the Appellants nor the Respondents, claim ownership over the suit property. The case set up by the Appellants is that they are tenants in respect of the suit property under the landlordship of minors namely Akhtar Jamal, Azhar Jamal and others, acting through their father Hafiz Ahmed Jamal. The Respondents, however, disputed the ownership and landlordship of the aforesaid persons and claimed that they had inherited the right to collect rent in respect of the suit property from their father, late Sh. Raghunandan Prasad, who, according to them, was himself a tenant in the suit property.

56. The learned First Appellate Court, while dealing with the aforesaid aspect, observed that the Respondents had earlier instituted a Suit No. 73/2012 *for Permanent Injunction* against the present Appellants in respect of the same property. In the said proceedings, the Appellants had examined Hafiz Akhtar Jamal, owner of the suit property as a witness, who admitted that the Appellants were tenants in the suit property. He further deposed that prior to the creation of tenancy in favour of the Appellants, the rent in respect of the property, was being collected by *late Sh. Raghunandan Prasad as their Munshi*. However, upon his resignation, the suit property was let out to the present Appellants.

57. In view of the aforesaid findings, the learned First Appellate Court held that the Appellants were only required to establish that the Respondents were trespassers in the suit property and had no lawful right to collect rent from the tenants/customers of the Appellants. **Upon appreciation of the evidence on record, the learned First Appellate Court concluded that**



the Appellants had sufficiently proved a better right and entitlement qua the suit property as against the Respondents. In arriving at the said conclusion, reliance was placed upon the judgment of Dr. N.G. Dastane vs Mrs. S. Dastane (1975) 2 SCC 326, wherein it was held that civil disputes are to be adjudicated on the principle of preponderance of probabilities.

58. In view of the aforesaid discussion, it is clear that the Respondents are in unauthorized occupation of the suit property and are, therefore, mere trespassers having no right, title, or interest therein. As rightly observed by the learned First Appellate Court, any permissive right or occupation that late Sh. Raghunandan Prasad may have enjoyed in his capacity as a Munshi stood terminated long ago. Thereafter, the suit property was lawfully let out by Hafiz Ahmed Jamal to the Appellants. Consequently, the Respondents cannot claim any independent or subsisting right in respect of the suit property and their continued possession thereof is wholly illegal and unauthorized.

59. Therefore, it is evident that the learned First Appellate Court had comprehensively dealt with and adjudicated upon all the issues arising in the suit on merits in the First Appeal. Despite having rendered findings on the material issues involved, the learned First Appellate Court nevertheless proceeded to remand the matter back to the learned Trial Court with directions to rehear the final arguments and pass a detailed judgment after recording findings on all the issues in accordance with law.

60. At this stage, the only issue that survives for consideration pertains to the legality and propriety of the remand order passed by the learned First Appellate Court. In order to examine and substantiate the aforesaid issue, it would be apposite and expedient to reproduce the provisions of Order 41



Rule 24 of the CPC, which read as under: -

“24. Where evidence on record sufficient Appellate Court may determine case finally.—Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgement, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.”

61. The Supreme Court in Shiva Kumar & Ors. vs Sharanabasappa & Ors (supra)., while conjointly interpreting Rules 23, 23-A and 24 of Order 41 CPC, categorically held that remand is an exception and not the rule. The Apex Court further observed that where the evidence available on record is sufficient for adjudication, the Appellate Court is under an obligation to finally decide the matter in exercise of powers under Order 41 Rule 24 CPC rather than remanding the case. It was further emphasized that an unnecessary remand only serves to prolong litigation and defeats the very cause of justice. The relevant extract of the said judgment is reproduced hereinbelow :-

25.2. Rule 23A came to be inserted in Order XLI CPC by way of the Code of Civil Procedure (Amendment) Act, 1976. Prior to this amendment, it was generally accepted by the Courts that although under Rule 23, an order of remand could be made only on reversal of a decree disposing of suit on a preliminary point but, the Appellate Court has the inherent power of remanding a case where it was considered necessary to do so in the interest of justice. Some of the High Courts had made similar provisions by way of their respective amendments. Insertion of Rule 23A



in Order XLI by the Amending Act of 1976 makes it explicit that even when the suit has been disposed of otherwise than on a preliminary point and the decree is reversed in appeal, the Appellate Court shall have the power of remand, if a re-trial is considered necessary.

25.3. A comprehension of the scheme of the provisions for remand as contained in Rules 23 and 23A of Order XLI is not complete without reference to the provision contained in Rule 24 of Order XLI that enables the Appellate Court to dispose of a case finally without a remand if the evidence on record is sufficient; notwithstanding that the Appellate Court proceeds on a ground entirely different from that on which the Trial Court had proceeded.

25.4. A conjoint reading of Rules 23, 23A and 24 of Order XLI brings forth the scope as also contours of the powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an Appellate Court is to follow the mandate of Rule 24 of Order XLI CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a retrial is considered necessary that the Appellate Court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. An order of remand only on the ground that the points touching the appreciation of evidence were not dealt with by the Trial Court may not be considered proper in a given case because the First Appellate Court itself is possessed of jurisdiction to enter into facts and appreciate the evidence. There could, of course, be several eventualities which may justify an order of remand or where remand would be rather necessary depending on the facts and the given set of circumstances of a case.

.....

25.5. It gets perforce reiterated that the occasion for remand would arise only when the factual findings of Trial



Court are reversed and a re-trial is considered necessary by the Appellate Court”.

62. The Supreme Court, in Sirajudheen vs Zeenath & Ors (supra)., further observed that an order of remand should not be employed as a mechanism for reopening concluded trials. The Court emphasized that Appellate Courts must refrain from unnecessarily prolonging litigation and that the discretionary power of remand is required to be exercised sparingly and only in exceptional circumstances. The relevant extract of the said judgment is reproduced hereinbelow: -

“9.2. While explaining the scope of Rules 23 and 23-A of Order XLI CPC, in the case of Municipal Corporation, Hyderabad (supra), this Court has observed as under:

"32. A distinction must be borne in mind between diverse powers of the appellate court to pass an order of remand. The scope of remand in terms of Order 41 Rule 23 is extremely limited. The suit was not decided on a preliminary issue. Order 41 Rule 23 was therefore not available. On what basis, the secondary evidence was allowed to be led is not clear. The High Court did not set aside the orders refusing to adduce secondary evidence.

33. Order 41 Rule 23-A of the Code of Civil Procedure is also not attracted. The High Court had not arrived at a finding that a retrial was necessary. The High Court again has not arrived at a finding that the decree is liable to be reversed. No case has been made out for invoking the jurisdiction of the Court under Order 41 Rule 23 of the Code.

34. An order of remand cannot be passed on ipse dixit of the court..... "

.....

13. It gets perforce reiterated that in the suit filed by respondent No. 1, the Trial Court had indeed returned its findings on the basis of evidence on record. Whether those findings are sustainable or not is a matter entirely



different and the High Court may examine the same but merely because the High Court could not reach to a conclusion on preponderance of probabilities, the evidence on record could not have been treated as insufficient so as to not pronounce the judgment in terms of Rule 24 of Order XLI CPC.”

63. The facts of the present case may now be examined, in light of the aforesaid settled principles of law. There is nothing on record to indicate that the learned First Appellate Court had framed any fresh or additional issues requiring adjudication by the learned Trial Court while passing the order of remand. On the contrary, it is evident from the impugned judgment that all the issues arising in the suit were duly considered and adjudicated upon appreciation of evidence by the learned First Appellate Court, whereafter the judgment and decree passed in Suit No. 198/2014 came to be set aside.

64. In view of the aforesaid, there existed no justification or necessity for remanding the suit back to the learned Trial Court merely for rehearing final arguments, particularly when the evidence available on record was sufficient for effective and final adjudication of the dispute by the learned First Appellate Court itself.

65. Hence, the impugned order of remand is hereby set aside, and the learned First Appellate Court is directed to finally adjudicate the Appeal and pass an appropriate judgment in accordance with law.

66. Parties are directed to appear before the learned District Judge, Central District, Tis Hazari Courts, Delhi, on 03.07.2026, who after hearing the parties, shall decide the Appeal. Considering that it is an old matter, the learned District Judge may make an endeavor to conclude the matter in 04 months.



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67. Therefore, the **present Appeal is allowed**. All pending applications are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 1, 2026/VA