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Rule 23-A, added by the Amendment Act, 1976, further permits remand of the case where the court has disposed of the case otherwise than on a preliminary point and the decree is reversed in appeal and a retrial is considered necessary. Before proceeding further it is necessary to understand the meaning of the term " preliminary point", A preliminary point is the point or issue the decision whereof in a particular way is sufficient to dispose of the whole suit. It is a point the decision of which avoids the full hearing of the suit, e.

g., issue of limitation of res judicata. Where the lower court decided the suit on the merits of the case there can be no remand order under O. 41, R. 23, by the appellate court.

The suit must have been decided on a preliminary point, and it is further necessary to find that the preliminary point has been wrongly decided before a remand order can be made by the appellate court under Order 41, R. 23 C. P. C. There existed some doubt whether an order of remand can be passed by an appellate court apart from the provisions of this rule. Those doubts were set at rest by the decision in the case of Ghuznavi v.

Allahabad Bank Ltd., (1970) I. L. R. 44 Cal. 929, F.

B. It may, sometimes, happen that a party has been materially prejudiced for want of proper trial. In such cases the appellate court could remand a case under its inherent power (section 151) for the ends of justice even though the suit had not been disposed of on a preliminary point. It was held in the above case that the power of the appellate court with regard to a remand was not restricted to the case specified in Order 41, R.

23, C. P. C. and the Legislature intended to recognise such powers as were exercised by the courts under their inherent jurisdiction. Order 41, R. 23 must, therefore, be read together with Section 151 which expressly preserves the inherent powers of the court to make such orders as may be necessary for the ends of justice. This decision is now codified in rule 23-A of the Code, added by the Amendment Act, 1976.