

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
SAO No.01 of 2021

Smt. Parul Bala Saha and others.

..... Plaintiff-Appellant(s)

V E R S U S

Smt. Santa Bala Das and others

.....Respondent(s)

For Appellant(s) : Mr. S.M. Chakraborty, Sr. Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and Judgment : 20th January, 2023.

JUDGMENT & ORDER(ORAL)

Heard Mr. S.M. Chakraborty, learned counsel appearing for the appellants. Despite service of notice, no representation is made on behalf of the respondents.

[2] The present appeal has been filed by the appellants-plaintiffs against the order of remand dated 29.01.2021 passed by the learned District Judge, Sepahijala District, Sonamura in Title Appeal No.03 of 2016.

[3] Brief facts are as under :

The plaintiff-petitioners instituted a suit against the defendant-respondents for declaration of title and recover of Khas possession in the court of learned Civil Judge, Junior Division, Sonamura, Sepahijala which was numbered as T.S No.19 of 2013. The case of the

plaintiffs before the learned Civil Judge was that the suit land, described in the plaint, originally belonged to the predecessor of the plaintiffs, who permitted the predecessors of the defendants No.1, 2, 3, 4 & 5 late Balahari Das and late Mantu Chandra Das to use the suit land as seed plot on the basis of their request but the said defendants without any consent and permission from the plaintiffs started construction on the said land on 07.11.2013 and after getting the information, the plaintiffs informed the local police station and registered a case for which they would not proceed further at the intervention of the police but continued their possession over the suit land.

[4] The plaintiffs filed a Title Suit No.19 of 2013 dated 25.06.2016 before the learned Civil Judge (Junior Division), Sonamura, West Tripura against the defendant-respondents for declaration of Title and recovery of Khash possession of the suit land. The learned Judge, after hearing the learned counsel for both sides, passed the decree for recovery of possession directing the defendant-respondents to vacate the suit land by removing the constructions from the suit land and restrained them from entering into the suit land by perpetual injunction. The operative portion of the judgment reads as under :

“Thus, this suit is decreed in favour of the plaintiffs who have their right title and interest over the suit land.

The defendants are hold as trespasser, hence, the defendants are directed to get themselves vacated from the suit land along with

removing of all sorts of constructions and/or obstructions on the suit land.

The defendants, their men, agents, representatives are restrained from entering into the suit land or constructing thereof by way of introducing perpetual injunction upon them.

Let a decree be drawn accordingly and place before me for my official seal signature within 15 days from today.

Thus the suit is decreed on contest. Parties are to bear their own costs.”

[5] Against the said judgment of the learned Civil Judge, the defendants-respondents preferred an appeal before the District Judge, Sepahijala District, Sonamura dated 29.01.2021 in Title Appeal No.03 of 2016. The learned District Judge after considering the facts and circumstances of the case, set aside the judgment of the learned Civil Judge dated 25.06.2016 and the case was remanded back to the learned court below for consideration afresh with a direction to formulate the issues and also allowed the parties to lead their evidence. The operative portion of the judgment is reproduced hereunder :

“From the entire facts and circumstances of the case this Court finds there is some ground for interference with the judgment and decree passed by the Ld. Court below dated 25.06.2016 and 17.07.2016. Accordingly, the impugned judgment and decree dated 25.06.2016 and 17.07.2016 passed by the learned Civil Judge(Jr. Div), Sonamura, Sepahijala Tripura in T.S.19 of 2013 is hereby set aside. The case is remanded back to the Ld. Court below with a direction to formulate the following issues and to allow the parties to lead their evidence on the basis of that issues and to decide the suit afresh preferably within a period of 6(six) months on the basis of pleadings and evidence on record adduced by both the parties. Considering this aspect, the appeal is hereby allowed and the case record is remanded back to the Court of Ld. Trial Court for deciding it afresh.”

[6] Aggrieved by the judgment of the learned District Judge, the appellant filed this instant appeal seeking the following reliefs :

- “(i) Admit the appeal;
- (ii) Call for records from the learned courts below;
- (iii) Issue notice upon the respondents; and after hearing the appeal, be pleased to set aside the impugned order and judgment dated 29.01.2021 passed by the learned appellate court below in T.A. No.3 of 2016 and affirm the judgment passed by the learned trial court on 25.06.2016 in T.S No.19 of 2013 and
- (iv) In the meantime, stay all operations of the impugned judgment passed by the learned appellate court below till disposal of the appeal.”

[7] Mr. S.M. Chakraborty, learned senior counsel appearing for the plaintiff-appellants contends that the learned District Judge, Sepahijala District, Sonamura without following the provisions contained in Order XLI Rule 23 of CPC, sent the matter before the trial Court by framing additional issues i.e. (i) whether the suit is barred by limitation and (ii) whether the suit is maintainable when all these points were discussed and decided in the judgment of the learned trial Court. He further contends that insofar as limitation is concerned, it is a suit for recovery of possession and limitation is 12 years. Counsel submits that since from the plaint itself it is found that there is no delay, framing these issues are nothing but prolonging the litigation between the parties. He also referred to Order XLI Rule 23 of CPC and averred that when the suit is decided on a preliminary point, the appellate court can exercise that power but in the instant case all the issues were discussed and decided by the trial court. He further

contends that the appellate court could have decided the matter on merit and instead sent the matter to the trial court without giving any finding that the suit has been decided on preliminary issue. Subsequently prays for dismissal of judgment dated 29.01.2021 passed by the learned District Judge, Sepahijala District, Sonamura in Title Appeal No.03 of 2016. Despite service of notice, no representation is made on behalf of the respondents.

[8] Order-XLI Rule 23 of CPC stipulates remand of case by Appellate Court, where the Court from whose decree an appeal is preferred, has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case and may further direct what issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred with directions to re-admit the suit under its original number in the register of civil suits and proceed to determine the suit and the evidence if any recorded during the original trial shall subject to all just exceptions be evidence during the trial after remand.

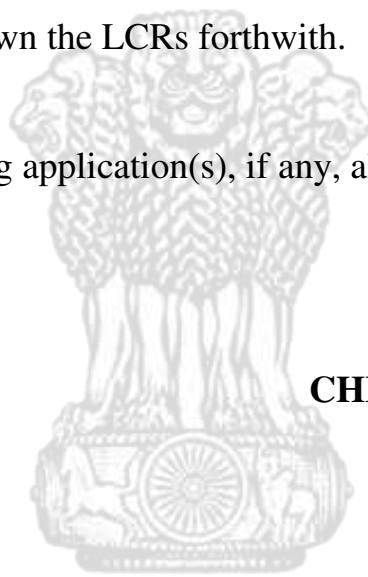
[9] This Court after hearing learned counsel for the appellant finds that the learned District Judge committed an error in remanding the matter to the trial Court. Order XLI Rule 23 specifies that when the suit is decided on a preliminary point, the appellate court can exercise that power but in

the instant case since the preliminary issues were discussed and decided by the trial court, the question of remanding the case after framing the issues to the trial Court does not arise.

[10] Accordingly, the present appeal is allowed and the judgment dated 29.01.2021 passed by the learned District Judge, Sepahijala District, Sonamura in Case No. Title Appeal No.03 2016 is set aside. The order dated 25.06.2016 passed by the learned Civil Judge (Junior Division), Sonamura, West Tripura, Court No.1 in Case No. Title Suit 19 of 2013 is confirmed. Send down the LCRs forthwith.

[11] Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)



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