

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Miscellaneous Appeal No. 80 of 2015**

1. Khoso @ Uday Singh S/o Tetku Ram Rawat Aged About 50 Years
2. Alakhram S/o Khoso Rawat Aged About 28 Years
3. Bhondal S/o Khoso Ram Rawat Aged About 26 Years. All are resident and cultivator Of Village Tipawan, Tahsil Palari, District Balodabazar Bhatapara Chhattisgarh (Defendants)

---- Appellants**Versus**

1. Kartikram S/o Ghanaram Yadav Aged About 60 Years
2. Vrindavan S/o Ghanaram (Dead) Through Lrs. Aged About 57 Years (dead) through LR's.

2 (a) Smt. Rohini Bai Age - 53 years W/o Ghanaram Yadav**2 (b) Purushottam Dutt Age - 24 S/o Brindavan Yadav**

Both are R/o Village Tipawan, Tahsil - Palari, District Balodabazar Bhatapara Chhattisgarh

3. State Of Chhattisgarh Through The Collector, Balodabazar, District Balodabazar Bhatapara Chhattisgarh (Plaintiffs)

---- Respondents

For Appellants	:	Shri P.K. Patel.
For Respondents No.1, 2(a) and 2(b)	:	Not noticed.
For Respondent No.3/ State	:	Smt. Sobha Kashyap, Dy. G.A.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Judgment on Board

10/09/2015

(1) Heard on admission.

(2) The instant Miscellaneous Appeal filed under Order 43 Rule 1(u) of the Code of Civil Procedure, 1908 (for short 'the Code') against the judgment and decree dated 22.7.2015, passed by the First Additional District Judge, Baloda Bazar, District Baloda Bazar, Bhatapara, Chhattisgarh, in Civil Appeal No. H-77-A of 2014, whereby and whereunder Learned First Appellate Court held that the trial Court has failed to mention any relief regarding Puranlal, also to mention that whether the suit of the Plaintiff is barred by time or not, and if so, how the

relief can be granted to the Plaintiff. The First Appellate Court also noticed that father's name of Defendant No.2 is different and as such there is some ambiguity. It is further noticed that though regarding issue No.3 it is decided that the suit is barred by time but the trial Court in appreciation of evidence at para 27 it has been observed that the suit has been filed within its limitation and as Plaintiff No.3 Puranlal was also party, however, why he was not shown as party in the impugned judgment and decree. As such, the first Appellate Court remanded the matter for rehearing as per law and to decide the matter afresh.

(3) Against the impugned order of remand, the Appellants had preferred the instant appeal. The judgment dated 22.7.2015 passed by the First Appellate Court has been assailed on the grounds taken in the memo of appeal as the same is contrary to the facts of the case. Learned First Appellate Court has erred in remanding the case to the trial Court for deciding afresh and instead on the basis of the material available on record, it ought to have recorded the finding on merit and the appeal should have been decided on the basis of its own merits. It is also pleaded that the First Appellate Court ought to have quashed the judgment and decree of the trial Court instead of remanding the case for passing the judgment and decree afresh. The judgment and decree for remanding the matter for fresh hearing is bad in law. Hence, it is prayed that the instant M.A. be admitted and allowed by setting aside the judgment and decree passed by the First Appellate Court on 22.7.2015.

(4) Heard Learned counsel for the Appellants on admission.

(5) Learned counsel for the Appellants supporting the grounds taken in the instant M.A. submitted that looking to the grounds taken the M.A., the appeal may be admitted for consideration and heard finally.

(6) While considering the appeal on the question on admission the Court has to see whether any prima facie material is available for hearing the matter finally.

(7) On due consideration, looking to paragraphs 9, 10 and 11 of the judgment and decree of the trial Court, it clearly goes to show that the trial Court committed a grave error in appreciation of evidence regarding issue No.3; no reason has been assigned for not mentioning the name of Puranlal, and also there is no appreciation of evidence regarding any relief should be granted to Puranlal (PW-3) or not.

(8) For the reasons mentioned in paragraphs 9 and 10 of the impugned judgment, the First Appellate Court has not committed any illegality in remanding the matter for rehearing both the parties and to pass judgment and decree afresh.

(9) In the considered view of this Court, the First Appellate Court has not committed any illegality or impropriety while remanding the matter to the trial Court.

(10) The Appellants failed to demonstrate any ground for admitting the instant M.A. for final hearing.

(11) Consequently, the instant M.A. is dismissed at the motion stage itself.

(12) No order as to costs.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE