

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No.484 of 2001**

1. Shiv Kumar, son of Late Shri Chamaru Sahu, aged about 39 years,
2. Kriparam, son of Late Shri Chamaru Sahu, aged about 35 years,
3. Shri Ram, son of Late Shri Chamaru Sahu, aged about 33 years,

All cultivators, R/o Village Patpar, PC No.92, R.I. Circle Lal Bahadur Nagar, Tahsil Dongarhgarh, District Rajnandgaon, Chhattisgarh

---- Appellants

versus

1. Bholuram, son of Late Shri Chamaru, aged about 50 years,
2. Bhagbati, wife of Late Shri Chamaru Sahu, aged 55 years,
3. Mangli Bai, daughter of Late Shri Chamaru Sahu, aged 50 years,
4. Khorbahari Bai, daughter of Late Shri Chamaru Sahu, aged about 41 years,

All cultivators, R/o Village Patpar, PC No.92, R.I. Circle Lalbahadur Nagar, Tahsil Dongarhgarh, District Rajnandgaon, Chhattisgarh

---- Respondents

For Appellants	:	Shri Amiyakant Tiwari, Advocate
For Respondents	:	Shri Parag Kotecha, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

8.7.2016

1. This miscellaneous appeal is directed against judgment dated 4.7.2001, whereby the Learned Lower Appellate Court allowed the appeal, set aside the judgment and decree of the Trial Court and remanded the matter to the Trial Court.

2. A suit was filed in the year 1984 by the first wife in which late Chamaru was arrayed as defendant No.1. In the said suit, the wife and children claimed their shares in the ancestral property. This suit was dismissed by judgment dated 27.8.1990. The plaintiffs, i.e., sons and the widow of Chamaru filed an appeal which was numbered as Civil Appeal No.19-A of 1990. This appeal was decided after more than a decade on

4.7.2001 and the Learned Lower Appellate Court, without giving a specific finding on the issues, set aside the judgment and decree of the Trial Court and remanded the matter to the Trial Court only on the ground that Chamaru had died and, thereafter, ordered that the plaint should be amended and evidence has to be led to establish the rights of the plaintiffs.

3. I am *prima facie* of the view that this matter could have been decided by the Lower Appellate Court itself and even if the Lower Appellate Court required further evidence for adjudicating the matter, nothing prevented the Lower Appellate Court to itself appreciate the evidence recorded by the Trial Court and to give its finding. Unfortunately, though the judgment of the Lower Appellate Court has been challenged by filing the instant miscellaneous appeal, the proceedings before the Trial Court have proceeded. Amendment has been made in the plaint, written statement to the suit has been filed and the parties have led their evidence. The Trial Court was only restrained from passing final judgment. This Court, in these circumstances, can only direct the Trial Court to record its finding and to deliver judgment and pass decree in the case at the earliest.

4. In view of these developments, I am clearly of the opinion that it would not be in the interest of justice to turn the clock back. The evidence has already been recorded and, therefore, I dispose of the appeal with the following directions:

1. That the Learned Trial Court shall within two months from today dispose of the civil suit which is of the year 1984,
2. The Trial Court shall also ensure that copy of the judgment and decree is made available to the parties within a week of delivery of the judgment,

3. In case, any appeal is filed against the said judgment and decree of the Trial Court by any party, the Lower Appellate Court shall dispose of the appeal on merits within three months of the Respondents being served notice in the appeal.

5. With the above observations, the appeal is disposed of.

6. This Court has not gone into the merits of the suit or the civil appeal and the Trial Court shall decide the suit only on the basis of the evidence recorded before it. The parties are directed to appear before the Learned Trial Court on 10th August, 2016.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE