

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 3 of 2014**

1. Tejuram, s/o Rameshwar Rajwade aged about 54 years, Occupation-Agricultural.
2. Harinandan, S/o Rameshwar Rajwade, aged about 48 years, Occupation-Agricultural.

Both R/o Village & Post- Taraju, P.S., Tahsil Lakhanpur, Distt. Surguja C.G.

**---- Appellants
(Defendants)**

Versus

1. Sukhanandann Ram, S/o Bholaram aged about 48 years, R/o Village & Post- Taraju, P.S., Tahsil Lakhanpur, Distt. Surguja C.G.
3. State Of Chhattisgarh Through- Collector, Distt. Surguja (C.G.)

**---- Respondents
Plaintiff**

For Appellants:	Shri Rahul Mishra, Advocate
For Respondent No.1:	Shri R.R. Soni, Advocate
For Respondent No.2:	Shri Ashish Surana, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker

Judgement

31/08/2016

1. This appeal is filed by the defendants-appellants challenging the legality and correctness of the judgment and decree dated 28-11-2013 passed by the 2nd Additional District Judge, Surguja in Civil Appeal No.46A/12 remanding the matter to the trial Court for deciding the civil suit afresh on merits in accordance with law.
2. Brief facts of the case are that the plaintiff/respondent No.1 filed a suit for declaration and permanent injunction stating therein that he is the owner

and in possession of disputed land bearing Khasra No.134/2 purchased by his father by way of registered sale deed dated 16.9.1971. However, the defendants No.1 & 2 /appellants herein are claiming their possession over the land in dispute and are trying to forcibly evict him. The parties went to trial and led evidence, oral and documentary, before the trial Court. The trial Court vide judgment and decree dated 5.5.2012 dismissed the suit filed by plaintiff/respondent No.1. The appeal preferred by the plaintiff/respondent No.1 has been allowed by the lower appellate Court vide impugned judgment, set aside the judgment and decree of the trial Court dated 5.5.2012 and remanded the matter to the trial Court with a direction to decide the suit afresh on merits by giving certain directions in Para-12 of the impugned judgment. The appellate Court has further directed for an opportunity to the parties to lead oral evidence as well as documentary evidence. It is this judgment which is the subject-matter of challenge in this appeal.

3. Counsel appearing for the defendants No.1 & 2/appellants submits that the lower appellate Court was totally wrong in setting aside the judgment of the trial court and remanding the matter to the trial court for deciding it afresh in accordance with law and as such it is liable to be set aside. He further submits that the impugned judgement is nothing but an opportunity to the plaintiff to fulfil the lacuna in the evidence, which is not permissible in law.
4. Supporting the impugned judgment, it has been argued by counsel for the respondent No.1 that the lower appellate Court was fully justified in remanding the matter to the trial Court for taking decision afresh in accordance with law.

5. I have heard counsel for the parties and perused the impugned judgment.
6. On the pleadings of the parties, following question of law arises for decision of this appeal;-
 - Whether the lower appellate Court was justified in remanding the matter to the trial Court by directing the trial Court to give an opportunity to the plaintiff/respondent to adduce evidence particularly when the trial Court passed the decree after going through the entire material available before it?
7. It is settled position of law that the order of remand should not be passed routinely as such remand orders leads to unnecessary delay and cause prejudice to the parties to the case. It is not to be exercised by the appellate court only because it finds it difficult to deal with the entire matter. If it does not agree with the decision of the trial court, it has to come with a proper finding of its own. There should be always an endeavour to dispose of the case by the appellate Court itself. When certain commissions and omissions made by the trial Court is brought to the notice of the appellate Court, the same should be corrected by the appellate Court.
8. In the present case, the trial Court had given opportunity to the parties to adduce evidence, both oral and documentary, and after a full fledged trial rendered a decision non-suited plaintiff/respondent No.1 herein on the ground that the plaintiff failed to prove his title and ownership over the suit land. Thus, it is apparent that during the course of trial the plaintiff/respondent No.1 had ample opportunity to produce documents establishing his title and possession over the disputed land, but he failed to do so or elected not to do so, and in these circumstances, the plaintiff is

not entitled to a fresh opportunity to produce evidence to discharge the onus of proving his case. Consequently, this Court is of the considered opinion that the lower appellate Court should not have remanded the matter to the trial Court for fresh disposal in accordance with law after providing opportunity to the parties to adduce evidence in order to fill lacuna in the evidence.

9. Accordingly, the question framed for decision of this appeal is answered in negative and in favour of the defendant/appellant herein.
10. In the result, the appeal is allowed. The impugned judgment is set aside and the matter is remitted to the lower appellate Court for consideration of appeal before it on merits only on the materials already on record. The lower appellate Court shall dispose of the appeal without being influenced by any of the observations made by this Court in this judgment.
11. The parties are directed to appear before the lower appellate Court on **3.10.2016**.

Sd/-

(Pritinker Diwaker)
Judge

roshan