

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 05 of 2014

Smt. Gouri Bai, W/o late Kedar Sahu, aged about 65 years, R/o village Pahanda, Police Station and Post Arang, Civil and Revenue District Raipur, CG

---- Appellant/plaintiff

Versus

- 1(A) Smt. Ramoutin Bai, W/o late Ramkhilawan Sahu, aged about 53 years, R/o Ward No. 12, House No. 148 Arang, Police Station and Post Arang, Civil and Revenue District Raipur, CG
- (B) Shayamabai W/o Salikram, D/o Late late Ramkhilawan Sahu, aged about 39 years, R/o Ladin Khurd, Police Station and Post Lani Khurd, Tahsil and District Mahasamund, CG
- (C) Smt. Saroj W/o Bhuvneshwar D/o late Ramkhilawan Sahu, aged about 29 years, R/o Nawagaon, Post Bhendri, Police Station Kareli, Civil and Revenue District Dhamtari, CG
- (D) Smt. Santoshi W/o Deepak, D/o late Ramkhilawan Sahu, aged about 25 years, R/o village Mohandi, Police Station and Post Dharsiwa, Civil and Revenue District, Raipur, CG
- (E) Ku. Seema Sahu D/o Late Ramkhilawan Sahu, aged about 22 years, R/o Ward No. 12, House No. 148, Arang, Police Station and Post Arang, Civil and Revenue District Raipur, CG
- 2(A) Yash Kumar S/o Late Darej Kumar, aged about 24 years,
- (B) Shankar Lal S/o Late Darej Kumar, aged about 22 years,
- Both above are R/o village Pahanda, Police Station, Post and Tahsil Arang, District Raipur, CG
3. Yuvraj Kumar Sahu S/o Kedar Sahu, aged about 42 years R/o village Pahanda, Police Station, Post and Tahsil Arang, District Raipur, CG
4. State of Chhattisgarh, through Collector Raipur, District Raipur, CG

---- Respondents/Defendants

For Appellant.	-	Shri Manoj Paranjape, Advocate.
For Respondents 1 (A,C,D,E)	-	Shri B.P. Sharma, Advocate.
For Respondent No.4/State	-	Shri Ashish Sarana, PL

Hon'ble Shri Justice Pritinker Diwaker

Order on Board

31/08/2016

With the consent of the parties the matter is heard finally.

The appellant/plaintiff is the mother of original defendants 1 to 3 who filed a suit for declaration of title and permanent injunction *inter alia* pleading that the suit property consisting of house and land was originally in the name of her father namely Girdharilal Sahu which after his death came in the name of her mother Rajimbai Sahu. Case of the plaintiff is that she was the only daughter of Girdharilal Sahu and Rahimbai Sahu and being so she is the owner of the suit property and no one else has any right over the same. According to her, taking advantage of her illiteracy her sons got recorded their names in the revenue record in relation to the suit property. Further case of the plaintiff is that during her lifetime it is she who is the actual owner of the suit property and therefore a declaration to this effect may be made and possession over the suit property may be given to her.

2. Civil Suit No. 13-A/2010 filed by the plaintiff was decreed by the trial Court vide judgment dated 27.7.2013 in her favour. Aggrieved by the said judgment the legal representatives of original defendant Ramkhilawan Sahu preferred first appeal under Section 96 of the Code of Civil Procedure and while setting aside the judgment passed by the trial Court, the first appellate Court remanded the matter with a direction to decide the suit afresh. The first appellate Court in the judgment impugned held as under:

- (i) that actual nature of dispute between the parties is not clear from the compromise deed; and
- (ii) that how the names of original defendants have been recorded in the revenue record is not clear and the mutation orders have not been produced by either of the parties.

After recording the aforesaid finding, in paragraph No. 17 it has been further held by the first appellate Court that the appeal is allowed in part, judgment and decree dated 27.7.2013 is set aside and the matter is remanded back to the trial Court. It is also held by the appellate Court that the trial Court will call the necessary record and after examining the same it will decide the suit afresh. Further, the Appellate Court did not even decide the application filed by the defendants under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure. It is this order passed by the first Appellate Court which is under challenge in this appeal preferred by the plaintiff.

3. Counsel for the appellant/plaintiff submits that by a well-reasoned judgment the suit filed by the plaintiff was decreed by the trial Court in her favour answering all the issues framed by it in an effective manner. He submits that once a categorical finding has been recorded by the trial Court on all the issues, without meeting out and upsetting those issues the matter could not have been remanded and therefore such wholesale remand is illegal. According to the counsel for the appellant/plaintiff, the first Appellate Court has committed an error law in partly allowing the appeal, setting aside the order of the trial Court and remitting the matter to it with a direction to decide the suit afresh. The first Appellate Court is also contended to have erred in law in directing the trial Court to summon the requisite documents and then pass the order after examining the same, for the reason that in a civil suit documents are to be filed and proved by the parties themselves and they cannot be summoned in the manner adopted by the first Appellate Court in directing the trial Court to summon the same. According to him, the first Appellate Court has further fallen in error in not deciding the application filed by the defendants under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure.

4. On the other hand counsel for the defendants/respondents 1 (A,C,D,E) supports the judgment impugned and submits that as the entire picture of the case was not clear before the trial Court, first Appellate Court was justified in remanding the matter with a direction to the trial Court to decide the suit afresh. He submits that no harm would be caused to the plaintiff if the material on record is re-appreciated by the trial Court.

5. State counsel assisted the Court.

6. Heard counsel for the parties and perused the material available on record.

7. While admitting the appeal, the following substantial question of law has been framed by this Court:

“Whether the First Appellate Court is justified in making wholesale and open remand in exercise of power under Order 41 Rule 23-A of the Code of Civil Procedure, without reversing the decree in appeal and without holding that the re-trial is necessary”?

8. From the judgment passed by the trial Court it is apparent that as many as five issues were framed by it and all have been answered in favour of the plaintiff. The first Appellate Court however, without meeting out and up-setting the finding recorded by the trial Court on any of the issues, has disturbed the same by remitting the matter with a direction to the trial Court to decide the suit afresh. Making such wholesale and open remand without taking pains to meet the finding of the trial Court, is not permissible under the law. First Appellate Court has further erred in law in partly allowing the appeal in spite of setting aside the judgment of the trial Court and remanding the matter to it because once the judgment under challenge before it is set aside and the matter is remitted, question of allowing the appeal in part does not arise. The lower appellate Court has also been in error in not deciding the application filed by

the defendants under order XLV rule 27 read with Section 151 of the Code of Civil Procedure.

9. It is a settled legal position that in the cases like the present one, the Court should loathe to exercise its power in terms of Order XLI Rule 23 of the Code of Civil Procedure and an order of remand should not be passed routinely. 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 and it should not shirk its duties. Further settled legal position with respect to remand cases is that the Court should not ordinarily remand a case under Order XLI Rule 23 CPC merely because the reasoning of the lower Court on some point was wrong as such remand order leads to un-necessary delay and cause prejudice to the parties to the case.

10. In view of above factual and legal position, this Court is of the considered opinion that the lower Appellate Court has committed an error of law in making wholesale and open remand of the case to the trial Court without upsetting the finding recorded by the trial Court on any of the issues and being so the judgment impugned dated 10.12.2013 cannot be made to stand and it is hereby set aside. First appellate Court is directed to decide the appeal on its own merits including the application under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure.

11. Substantial question of law framed by this Court is thus answered in negative.

12. Parties to appear before the First appellate Court on 3.10.2016.

13. Appeal allowed.

Sd/-
(Pritinker Diwaker)
Judge

