

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 17 of 2015**

- Smt. Mundin Bai, W/o Baliram Yadav, Aged About 63 Years, R/o Village Semariya, Tahsil Champa, District Janjgir-Champa (C.G.)

---- Appellant

Versus

1. Utrakumari, D/o Jugutram Kurmi, Aged About 38 Years, R/o Village Semariya, Tahsil Champa, District Janjgir-Champa (C.G.)
2. State of Chhattisgarh Through The Collector Janjgir Champa, District Janjgir-Champa (C.G.)

---- Respondents

For Appellant	:	Shri Shobhit Koshta, Advocate.
For Respondent No.1	:	None.
For Respondent No.2/State	:	Shri U.N.S. Deo, Government Advocate.

Hon'ble Thottathil B. Radhakrishnan, Chief Justice
Order on Board

29.06.2018

1. Heard the learned counsel for the Appellant/Defendant and the learned Government Advocate.
2. None appears for the 1st Respondent/Plaintiff, though served.
3. The first respondent filed the suit seeking declaration of title, possession and ancillary reliefs. The Trial Court answered issues and ultimately held that the suit was barred by limitation. The lower appellate Court allowed the Plaintiff's appeal and remanded the suit for *de novo* trial on the premise that the suit property has to be identified in view of the disputes.
4. It is seen that the Trial Court has answered different issues. The Appellant herein who is the Defendant, does not dispute the identity of the suit property as described by the Plaintiff. Therefore, there is no issue as to the identity of the

property vis-a-vis the Plaintiff and the Defendant, to be decided as an issue. It is submitted, even before this Court by the learned counsel for the Appellant/Defendant that the Defendant does not dispute the identity of the property as pleaded in the plaint. The lower appellate Court ought to have decided the appeal on all issues rather than order remand to identify the suit property.

5. For the aforesaid reasons, the order of the first appellate Court dated 25.11.2014 passed in Civil Appeal No.40-A/2014 by the 3rd Additional District Judge, Janjgir-Champa is set aside and that Court is directed to take back Civil Appeal No.40-A/2014 to file and consider the same *de novo* after issuing notice to the parties. It is clarified that nothing expressed in this judgment would be binding on the parties at the hearing of the appeal by the lower appellate Court except the statement of the Defendant that she does not dispute the identity of the property as described in the plaint.
6. Parties shall mark appearance before the Court below on July 16th 2018. If any of the party is not present, the lower Appellate Court will issue notice to such party.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice