

HIGH COURT OF CHHATTISGARH, BILASPUR**SECOND APPEAL No. 717 of 2003**

Paklooram S/o Shri Jhaduram, Aged about 58 years, r/o Village Kulipota, Tahsil Janjgeer, District Janjgeer-Champa, Chhattisgarh
---Appellant/Plaintiff

Versus

1. Shivdas (died) through LRs :-

(a) Tularam S/o Late Shivdas, aged about 51 years, R/o Village Kulipota, Post Birghani, Police Station Malkharauda, District Janjgir Champa (C.G.)

(b) Smt. Uma Bai D/o Late Shivdas W/o Rathram, aged about 48 years, R/o Village Jarve (Sakreli), Police Station Sakti, District Janjgir Champa (C.G.)

(c) Smt. Shanti Bai D/o Late Shivdas W/o Bhojram, aged about 42 years, R/o Village Devgaon, Police Station Malkharauda, District Janjgir Champa (C.G.)

2. State of Chhattisgarh, through the Collector, District Janjgir Champa (C.G.)
---- Respondents/Defendants

For Appellant	:	Mr. Rakesh Pandey, Advocate.
For Respondent No.2/State	:	Mr. Arun Sao, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/11/18

1. The plaintiff filed a suit for declaration of title and permanent injunction stating that he is the title holder of the suit land which was granted by the trial Court. In an appeal preferred by the defendant, the decree of the trial Court was set aside. Before the First Appellate Court, the plaintiff also preferred cross-objection on 13.10.2003 which was not decided. In a second appeal preferred, the substantial question of law

has been framed as under :-

“Whether the first appellate Court has committed an error of law in not considering and deciding the cross-objection preferred by the appellant in the first appeal, as such certain disputed questions of fact and law which were raised by the appellant in the cross-objection went unanswered.”

2. Learned counsel appearing for the appellant/plaintiff submits that the First Appellate Court is absolutely unjustified in not deciding the cross-objection on its merit.
3. Learned counsel for the respondents would submit that the cross-objection preferred by the plaintiff has no force and it deserves to be rejected.
4. I have heard learned counsel for the appellant and went through the records with utmost circumspection.
5. The cross-objection was preferred by the plaintiff before the First Appellate Court on 13.10.2003 and which was replied by the other side on 18.10.2003 but it was not decided by the First Appellate Court and the appeal of other side was allowed. Though the appellant/plaintiff preferred the cross-objection before the appellate Court well within limitation but the First Appellate Court has not decided the cross-objection.
6. The Supreme Court in the case of **Hari Shankar Rastogi v. Sham Manohar and Others**¹ has held that cross-objection is like an appeal and even if the appeal is dismissed or withdrawn, the cross-objection can be

¹ (2005) 3 SCC 761

decided and held in Para-5 as under :-

“Thus, it is clear that cross-objection is like an appeal. It has all the trappings of an appeal. Even when the appeal is withdrawn or is dismissed, cross-objection can still be heard and determined.”

7. In view of the above stated fact that cross-objection is a nature of appeal, the First Appellate Court is absolutely unjustified in not deciding the cross-objection though the appeal has been allowed.

8. Accordingly, the cross-objection is remitted to the First Appellate Court to take decision after hearing the parties within three months from the date of receipt of copy of this order. Parties are directed to appear before the First Appellate Court on 10.12.2018.

9. Accordingly, the second appeal is allowed to the extent indicated hereinabove. No cost(s).

SD/-
(Sanjay K. Agrawal)
Judge