

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 105 of 2016

Banshilal S/o Shri Madan Lal Kesharwani, R/o Behind Radha Krishna Temple, New Mandi Ganj, Panditari Tahsil Raipur, Chhattisgarh*Plaintiff.* --- **Appellant**

Versus

Chandrakumar @ Munna S/o Late Shri Madan Lal Kesharwani, Aged About 45 Years R/o Behind Radha Krishna Temple, New Mandi Ganj, Panditari Tahsil Raipur, Chhattisgarh *Defendant.* --- **Respondent**

For the Appellant : Mr. Sachin Singh Rajput, Advocate

For the respondent : Mr. Rajkumar Pali, Advocate

Hon'ble Shri Justice Goutam Bhaduri

ORAL ORDER

15.11.2018

1. The present appeal is against the judgment dated 26.07.2016 passed by the learned District Judge, Raipur in Civil Appeal No.26-A/2018 whereby the District Judge Raipur in exercise of appellate jurisdiction has remanded the case to the trial Court for fresh adjudication as at the time of hearing certain documents were filed before the appellate Court whereby the respondent/defendant claimed to be the owner of suit premises.
2. The order would show that the suit was filed by the appellant against the respondent for ejectment. In such suit the respondent remained ex-parte, therefore, a decree of eviction was passed. Subsequently the respondent/defendant preferred an appeal before the District Judge. Though the application under Order 39 Rule 1(3) of CPC was filed but

simultaneously it was not pressed.

3. During the course of appeal the respondent claimed that he is owner of the suit property by filing certain documents showing the payment of Municipal Tax. The application was filed under Order 41 Rule 27 of CPC along-with the document on behalf of the appellant and by order dated 05.07.2013 the court below has directed to take the said document on record. However, there was no categorical direction given by the Court below as to whether or not the document is exhibited in the form of evidence or to prove the same. Thereafter, the appellate court while adjudicating the appeal came to conclusion that the defendant respondent who has filed the document whereby he claimed to be the owner of the suit property is required to be gone into. The order of the appellate Court further reflects that the appellant has also filed certain documents to claim his ownership whereby he claimed the property to have purchased by a sale deed. Under the circumstances the appellate Court has remanded the case to the trial Court to adjudicate the matter afresh by allowing the parties to adduce evidence.
3. After going through the order of the trial Court, it appears that the reasons assigned by the appellate Court whereby the owner of the suit property itself has to be decided are plausible and it would be required to determine the actual lis of the parties as both the parties are claiming right of ownership on the suit land. I am of the opinion that since the rival claims of the parties are to be adjudicated, the remand order of the appellate Court do not suffer from any illegality

as it would be required to avoid multiplicity of proceedings for all the times to come.

4. In the result, I do not find any reason to interfere in the order of the appellate Court. However, considering the facts of the case, the trial Court is directed to decide the civil suit within a further period of six months from the date of receipt/production of certified copy of this order.
5. With the above direction/observation, this petition stands finally disposed of.

**Sd/-
GOUTAM BHADURI
JUDGE**