

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 412 of 2006**

Madan Singh, Son of Shyam Kumar, Aged about 50 years, Resident of Village Godhi, Tahsil Gharghoda, District Raigarh, Chhattisgarh.

---- Appellant/Defendant

Versus

1. Laxman Singh, Son of Mani Ram, Aged about 55 years.
2. Amgihin, Widow of Lacchi Ram Sidar, Aged about 53 years.
3. Dhobai, Daughter of Lacchi Ram Sidar, Aged about 38 years.
4. Halidar, Son of Late Lachhi Ram Sidar, Aged about 22 years.
5. Pilibai, Daughter of Late Lacchi Ram Sidar, Wife of Amrit Sidar, Aged about 30 years.

All respondents No. 2 to 5 Agriculturist.

Respondent No. 2 to 4 Resident of Village Godhi, Tahsil Gharghoda, District Raigarh, Chhattisgarh and Respondent No. 5 Resident of Village Nansiya, Tahsil and District Raigarh, Chhattisgarh.

6. Harishanker, Son of Maniram, Aged about 50 years, Occupation Agriculturist, Resident of Village Godhi, Tahsil Gharghoda, District Raigarh, Chhattisgarh.

---- Plaintiffs

7. State of Chhattisgarh, Through Collector, Raigarh, Chhattisgarh. (Defendant No. 2)

---- Respondents

For Appellant	:	Mr. K.N. Nande, Advocate
For State	:	Mr. Saleem Kazi, Deputy Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****24/07/19**

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by the defendant under Section 100 of the Code of Civil Procedure.
2. Mr. K.N. Nande, learned counsel for the defendant submits that both the Courts below are absolutely unjustified in not recording fresh evidence after the civil appeal was remanded back on 22/09/2001 by the first appellate Court, as fresh evidence could have been recorded before decreeing the suit of the plaintiff, as such, it involves substantial question of law for determination.
3. I have heard learned counsel for the defendant, considered his submissions and went through the records with utmost circumspection.
4. Plaintiff's suit bearing No. 4-A/2003 for recovery of possession of land along with trees standing on it was decreed by the learned trial Court on 29/11/2004. On an appeal preferred by the defendant bearing No. 3-A/2005, learned first appellate Court, by its judgment and decree dated 02/05/2006 set aside the judgment and decree passed by the learned trial Court and remanded back the appeal with a direction to make survey by appointment of a local Commissioner of land bearing khasra No. 151/1-d and to give the parties the opportunity to cross-examine that local Commissioner.
5. In complying with that direction, fresh demarcation was made and the local Commissioner was appointed. The local Commissioner, after surveying the suit land, submitted his report and he was later on examined and cross-examined on 16/10/2004 and 04/11/2004 and thereafter, the matter was heard finally. On the day when the suit was fixed for final argument, the defendant filed an application for recording fresh evidence of the parties,

which learned trial Court rejected by its order dated 25/11/2004 holding that limited remand was made therefore, fresh evidence of the parties is not required to be recorded at all, and thereafter, on 29/11/2004 decreed the suit in favour of the plaintiff, which has been affirmed by learned first appellate Court.

6. The argument of learned counsel for the defendant that fresh evidence ought to have been recorded by the trial Court deserves to be rejected as earlier on 22/09/2001, limited remand was made by the first appellate Court to the extent of the appointment of the local Commissioner to make survey of the land bearing khasra No. 151/1-d and submit his report and to give opportunity to the parties to examine and cross-examine that local Commissioner, which was done by the trial Court on remand which was affirmed by the first appellate Court. I do not find any perversity and illegality in the said finding and no substantial question of law is involved in this second appeal.
7. The second appeal deserves to be and is accordingly dismissed *in limine* at admission stage without noticing to the other side.

Sd/-

(Sanjay K. Agrawal)
Judge