

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 302 of 2005

Laxmin Bai, d/o Maheshram Caste Mawar, aged about 50 years,
Occupation Agriculturists, r/o Village Thakurpali, Tah. Srangarh, Distt.
Raigarh, C.G.

---- Appellant

Versus

1. Banmali s/o Ghasiram Ganda, aged about 50 yrs, Occupation agriculturist r/o Village Barpali, P.S. Sariya, Tah. Sarangarh, Distt. Raigarh
2. State of C.G. through Collector, Raigarh

---- Respondents

For Appellant	:	Mr. R.K. Tiwari, Advocate
For Respondent No. 1	:	None
For State/ Respondent No. 2	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04.07.2019

1. The appellant's/ plaintiff's appeal filed under Section 100 was admitted for final hearing on following substantial question of law:-

“Whether the courts below have erred in law by dismissing the matter as the order passed by the Additional Collector, Raigarh, is not perverse and without authority?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court).

2. The plaintiff herein has filed a suit for declaring the order dated 16.10.2002 passed by Additional Collector in the case of Banmali vs. Laxmin Bai is null and void, which was dismissed by the trial Court and upheld by the first appellate Court. And against which the second appeal has been preferred by the plaintiff in which

substantial question of law has been framed set out in the opening paragraph of the judgment.

3. Mr. Tiwari, learned counsel for the plaintiff would submit that the Additional Collector on 16.10.2002 vide Exhibit P-6 allowed the appeal of defendant herein on the ground of violation of principles of natural justice but did not remit the matter to the SDO for deciding it after giving opportunity to the Respondent No. 1/ defendant herein. Therefore, the order dated 16.10.2002 is unsustainable and bad in law.
4. Learned counsel for the State would support the impugned judgment and decree.
5. I have heard the learned counsel for the appellant, learned State Counsel, considered their rival submissions made and went through the records with utmost circumspection.
6. The suit land was originally settled in favour of plaintiff against which an order was passed on 03.11.1999 by Additional Tahsildar. The plaintiff herein questioned the order dated 03.11.1999. The SDO(Revenue) by an order dated 30.07.2001 set-aside the order of Additional Tahsildar dated 30.11.1999, feeling aggrieved against which the defendant preferred an appeal before the Additional Collector. The Additional Collector allowed the appeal on 06.10.2002 vide Exhibit P-6 finding the order passed by the SDO (Revenue) in breach of principles of natural justice without impleading the defendant No. 1 herein. Therefore, the order of Additional Collector passed on 16.10.2002 holding the order to be in violation of principles of natural justice, he ought to have remitted the matter for fresh hearing after giving opportunity of defendant

No. 1 but did not remit the matter to the SDO. Once the order of SDO is set-aside on the ground of violations of principles of natural justice, Additional District Collector ought to have remitted the matter to the SDO for hearing the defendant herein and to pass fresh order in accordance with law, which was not done.

7. Therefore, the order of Additional Collector to that extent is illegal and both the Courts have failed to notice the illegality committed by Additional Collector in granting the appeal filed by the plaintiff herein.
8. Consequently, the judgment and decree passed by both the Courts below are set-aside and matter is remitted to the SDO, Sarangarh who will hear the plaintiff and defendant and decide the matter afresh within three months after noticing the parties.
9. Accordingly, the second appeal is allowed to the extent indicated hereinabove. No cost(s). A decree be drawn up accordingly.

**Sd/-
(Sanjay K. Agrawal)
Judge**