

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 111 of 2015

1. Triveni Bai, aged 55 years, D/o Budhu.
 2. Narbadiya Bai, aged 58 years, D/o Budhu.
- Both are R/o Tikarkala, Tahsil- Pendraroad, District- Bilaspur (C.G.)

---- Appellants

Versus

1. Trilok Chand, S/o Late Darbari Lal, aged 70 years, R/o Village- Gourela, Tahsil- Pendraroad, District- Bilaspur (C.G.)
2. State of C.G. Through- Collector, District- Bilaspur (C.G.)

---- Respondents

For Appellants : Mr. Vijay Shrivastava & Mr. Umesh Shrivastava, Advocates.

For Respondent No. 1 : Mr. Ravindra Agrawal, Advocate.

For State/ Resp. No. 2 : Mr. Ravish Verma, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

13/08/2019

1. This Miscellaneous Appeal is preferred under Order 43 Rule 1(u) of the Code of Civil Procedure, 1908 against order dated 01.09.2015 passed by Additional District Judge, Pendra Road, District- Bilaspur (C.G.) in Civil Appeal No. 39A/2015, wherein the said court remanded Civil Suit No. 159A/2002 to the trial court i.e. Court of Civil Judge Class-I, Pendra Road, District- Bilaspur for providing opportunity to adduce evidence to both sides and after considering the evidence and document decide the matter afresh.

2. From record of the trial court, it is clear that both the parties have been provided opportunity to adduce oral and documentary evidence. It is not a case where the trial court has not provided opportunity to both sides, therefore, the First Appellate Court is not right in holding that again opportunity be provided to both sides to adduce evidence. When oral and documentary evidence is closed by both sides before the trial court, it is not proper to send back the matter to the trial court for recording evidence. No party can say that they have not been provided opportunity to adduce evidence. The entire documents have been exhibited and oral and documentary evidence is also closed after examination-in-chief and cross-examination. When both sides have closed their evidence, it is not the case where retrial is necessary. As per Order 41 Rule 23A of the C.P.C. 1908, the case should be remanded only when retrial is considered necessary.
3. In the present case, there is nothing on record to say that the trial is having serious lacuna, therefore, the order passed by the First Appellate Court is not proper looking to the provisions for remanding the case. The trial court has passed the judgment/decreed and decided the issues between the parties and the appeal is continuation of suit, therefore, the First Appellate Court has all the right to marshal the entire evidence on record and the First Appellate Court is competent to decide the issue between the parties, therefore, order of remand cannot be said to be proper in the facts and

circumstances of the case. The First Appellate Court shall decide the issue between the parties, therefore, the order passed by the First Appellate Court is not sustainable.

4. Accordingly, the instant Miscellaneous Appeal is allowed. The order passed by the Additional District Judge, Pendra Road, District- Bilaspur / First Appellate Court is set aside. The said court shall decide the appeal on merits.
5. Both the parties shall appear before the Court of Additional District Judge, Pendra Road, District- Bilaspur on 25th September, 2019 for further proceeding.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun