IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 689 of 2018

Ashok Teli, Aged about 49 years S/o Sitaram Teli, R/o Village Atka, P.O. Atka, P.S. Bagodar, District Giridih.

..... … Appellant

Versus

1. Mahesh Teli
2. Mukesh Teli
3. Pawan Teli,

All sons of Late Tulsi Teli, R/o Village Atkachatti, P.O. Atkadih, P.S. Bagodar, District Giridih.

4. Renu Devi, Wife of Sanjay Sao, Resident of Village Sigrawan, P.O. and P.S. Chouparan, District Hazaribag.

..... … Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellant : Mr. Sudhir Kumar Sharma, Advocate.
: Mr. Ram Chander Sahu, Advocate.
For the Respondents : Mr. Birendra Kumar, Advocate
: Mr. S.K. Murtty, Advocate.

07/ 26.10.2026 Heard Mr. Sudhir Kumar Sharma, learned counsel appearing for the appellant and Mr. Birendra Kumar, learned counsel appearing for the respondents.

2. This appeal has been preferred under Order XLIII Rule 1(u) of the Code of Civil Procedure, 1908 being aggrieved and dissatisfied with the judgment dated 13.08.2018 and the decree sealed and signed on 24.08.2018, passed by the learned District Judge-VIII, Giridh, in Civil Appeal No. 27 of 2007, whereby, the learned first appellate court has confirmed the final decree, passed by the learned Sub-Judge-I, Giridih, passed in Partition Suit No. 93/1970 / 110/1973 except Plot Nos. 161 and 99 of Khata No. 313 and accordingly partly allowed the

appeal and remitted the matter to the learned trial court for appointing the survey knowing Pleader Commissioner on behalf of the plaintiff and carve out shares of both the parties in plot Nos. 161 and 99 under Khata No. 313 and thereafter to prepare the final decree.

3. Mr. Sharma, learned counsel appearing for the appellant submits that the original plaintiffs namely Nandowa Teli, Tulsi Teli and Prayag Teli instituted Partition Suit being Partition Suit No. 93/1970 against Heraj Teli, Sita Ram Teli, Ashoke Teli (minor at relevant time) and others, before the Court of learned Sub-Judge, Hazaribag for partition in favour of the plaintiffs and a separate Takhta of half be carved out of the lands of Schedule 'B' and be allotted to the plaintiffs and Khas possession thereof be given to the plaintiffs by appointment of an Amin or Pleader Commissioner.

4. Mr. Sharma, learned counsel appearing for the appellant submits that the learned Sub-Judge, Giridih has decided Partition Suit No. 93/110 of 1970/1973 by judgment dated 20.03.1975 and decreed the suit in part and declared that land mentioned as Item No. 1 of Schedule B and Item No. A of Item No. 2 of Schedule B are joint properties of plaintiffs and defendants and plaintiffs have got half share in the same and plaintiffs are entitled to get these lands partitioned and their shares separated by appointing of survey knowing Pleader Commissioner. He further submits that the learned Trial Court declared that land mentioned in Item Nos. (b), (d) and (e) of Item No. 2 of Schedule B are the self-acquired properties of defendant No. 1 and his father and these properties are not liable to be partitioned. He then submits that the learned trial court has further declared that Item No. (c) of Item No. 2 of Schedule B is a self-acquired property of grandfather of plaintiff No. 1 and defendants have no share in the same and

accordingly directed to draw preliminary decree.

5. Mr. Sharma next submits that plaintiffs/respondents preferred appeal, being Title Appeal No. 12 of 1975 and the defendant Nos. 1 to 3 have also preferred separate appeal being Title Appeal No. 9 of 1975. He further submits that the learned 3rd Additional District Judge, Hazaribagh by the common judgment and decree dated 21st of June, 1976, passed in Title Appeal No. 12 / 1975 and T.A. No. 9/1975 allowed T.A. No. 12 of 1975 and dismissed T.A. No. 9 of 1975 and hold that the plaintiffs are entitled to get partition decree in respect of all the lands described in Schedule-B of the plaint, in which, they have eight anna share being descendants of Sambodh and entitled to get their land separated by metes and bound. He further submits that the appellant / defendant preferred Second Appeal being S.A. No. 137/76(R) against the judgment and decree dated 21st June, 1976, passed by the learned first appellate court in Title Appeal Nos. 12/1975 and 9/1975 before this Court and this court in terms of order dated 1st August, 1983 dismissed the said Second Appeal No. 137/76(R).

6. Mr. Sharma, learned counsel appearing for the appellant submits that on 7th of April, 2003 the plaintiffs filed application for appointment of Pleader Commissioner for carving out their half share out of the suit land, as per the judgment and decree dated 21st June, 1976, in Title Appeal No. 12/1975, passed by the learned first appellate Court and accordingly, the Pleader Commissioner was appointed and made local investigation and conducted measurement in presence of parties and the villagers after proper valuation allocated shares of plaintiffs and defendants in Schedule B properties and submitted his report on 10th of May, 2004. He next submits that the Pleader Commissioner was examined on 12.08.2005 and cross-examined by

parties, as the court witness, which concluded on 02.09.2005. He then submits that the plaintiffs/respondents filed objection to the Pleader Commissioner report dated 10.05.2004 and raised various objections, such a valuation, allocation of valuable plots in the share of defendants etc. and the rejoinder on behalf of the defendants was also filed to the objection raised by the plaintiffs to the report of the Pleader Commissioner and the learned Sub-Ordinate Judge-I, Giridih by order dated 16.01.2006 passed in Partition Suit No. 93/1970 dismissed the objections filed by the plaintiffs and directed the office to prepare the final decree on the basis of Pleader Commissioner's report. He submits that accordingly, the final decree dated 07.02.2007 was prepared by the learned Sub-Ordinate Judge-I, Giridih making Pleader Commissioner's report and map as a part of the final decree. He next submits that the plaintiff/respondent preferred appeal being Civil appeal No. 27/2007 against the final decree dated 07.02.2007 passed by the learned Sub-Ordinate judge-I, Giridih, in Partition suit No. 93/1970 before the District Judge, Giridih on the following grounds:-

(i) That value of the property has not been properly appreciated by Learned Survey Knowing Pleader Commissioner.

(ii) The Learned Court below did not consider that the Pleader Commissioner relied on the entries in Survey Khatiyan but did not consider that a substantive area of Gadha and Tand has been converted into a paddy land.

(iii) The learned Court did not consider that Plot No.161 measuring area of 40 acres is most valuable land situated near the G.T. Road has been allotted to defendant and no share of the plaintiff/appellant has been allotted in

Plot No. 161.

It is also submitted that the learned Commissioner allotted other land near G.T. Road except Plot over which parties have their house to the defendants/respondents. The learned court below also committed wrong by not appreciating fact that commissioner has illegally allotted the land to the plaintiff which has already been sold by the defendant Hemraj Nayak to his son Ashok Nayak. The Learned Court below did not consider that total area of land in item no. 1 is 4.10 acres and has lost sight of remaining part 0.06 acres.

It is also submitted that on actual verification Class I paddy land is more than 0.63 acres.

7. Mr. Sharma, learned counsel submits that the learned first appellate court in terms of judgment dated 13th August, 2018 and decree sealed & signed on 24th August, 2018 has been pleased to confirm the final decree prepared by the learned trial court except Plot Nos. 161 & 99 under Khata No. 313 and accordingly partly allowed the appeal and remitted the matter to the learned Trial Court for appointing Survey Knowing Pleader Commissioner on behalf of plaintiff and carved out shares of both the parties in Plot No. 161 & 99 of Khata No. 313 and passed final decree accordingly, as the pleader commissioner has classified the land in two categories and valued accordingly and therefore equal share has been allocated to the parties to the best of the capacity of the pleader commissioner and another. He next submits that the learned first appellate court has further committed an error with regard to allocation of plot No. 161 in favour of the defendant/respondent and the allocation of plot No. 99 in favour of

plaintiffs/respondents/respondents. In view of that, Mr. Sharma, learned counsel submits that the learned appellate court made an error by way of remanding the matter to the learned trial court with a direction to appoint the fresh pleader commissioner for carving out the proportionate shares to both the parties in Plot Nos. 161 and 99 of Khata No. 313. He submits that there was no occasion to remand the matter and the learned first appellate court himself is competent enough to do so, however, he has not followed the procedure laid down in Order-43 Rule-25 of the CPC. He submits that the partition suit is of the year 1970 and due to this error of the learned first appellate court, the matter is still hanging.

8. Mr. Sharma, learned counsel submits that there are principles of remand, which has been considered in several judgments and firstly he relied in the case of ***Shivakumar and Ors. versus Sharanabasappa & Ors***., reported in **(2021) 11 SCC 277**, wherein the Hon'ble Supreme Court in para-26.4 has held as follows:-

> *"26.4. A conjoint reading of Rules 23, 23A and 24 of Order XLI brings forth the scope as also contours of the powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an Appellate Court is to follow the mandate of Rule 24 of Order XLI CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a re-trial is considered necessary that the Appellate Court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. An order*

> *of remand only on the ground that the points touching the appreciation of evidence were not dealt with by the Trial Court may not be considered proper in a given case because the First Appellate Court itself is possessed of jurisdiction to enter into facts and appreciate the evidence. There could, of course, be several eventualities which may justify an order of remand or where remand would be rather necessary depending on the facts and the given set of circumstances of a case."*

9. Relying on the above judgment, Mr. Sharma, learned counsel submits that the remand is not to be passed in a routine manner that too in a case where the first appellate court itself is competent to pass the further order.

10. Mr. Sharma, further relied in the case of ***J. Balaji Singh Versus Diwakar Cole & Ors.***, reported in **(2017) 14 SCC 207**, where in paras-14 to 17, the Hon'ble Supreme court held as follows:-

> *"14. There are three provisions in the Code which deal with the power of the Appellate Court to remand the case to the Trial Court. These provisions are Order 41 Rules 23, 23-A, and 25.*
>
> *14.1. So far as Order 41 Rule 23 is concerned, it enables the Appellate Court to remand the case to the Trial Court when it finds that the Trial Court has disposed of the suit upon a preliminary point. The Appellate Court in such cases is empowered to direct the Trial Court to decide all the issues on evidence on record.*
>
> *14.2. So far as Rule 23-A is concerned, it enables the Appellate Court to remand the case to the Trial Court when it finds that though the Trial Court has disposed of the suit on all the issues but on reversal of the decree in appeal, a re-trial is considered necessary by the*

Appellate Court.

14.3. So far as Rule 25 is concerned, it enables the Appellate Court to frame or try the issue if it finds that it is essential to the right decision of the suit and was not framed by the Trial Court. The Appellate Court in such case may, accordingly, frame the issues and refer the same to the Trial Court to take the evidence and record the findings on such issues and return to the Appellate Court for deciding the appeal. In such cases, the Appellate Court retains the appeal to itself.

15. Now coming to the facts of the case, we are of the considered opinion that once the first Appellate Court allowed the application under Order 41 Rule 27 of Code and took on record the additional evidence, it rightly set aside the judgment/decree of the Trial Court giving liberty to the parties to lead additional evidence in support of their case which, in turn, enabled the Trial Court to decide the civil suit afresh on merits in the light of entire evidence. The first Appellate Court was, therefore, justified in taking recourse to powers conferred on the Appellate Court under Order 41 Rule 23-A for remanding the case to the Trial Court. We find no fault in exercise of such power by the first Appellate Court.

16. In our considered view, the only error which the first Appellate Court committed was that it went on to record the findings on merits. In our view, it was not necessary to do so while passing the order of remand. The reason is that once the first Appellate Court formed an opinion to remand the case, it was required to give reasons in support of the remand order as to why the remand is called for in the case. Indeed, the remand was made only to enable the Trial Court to decide the case on merits. Therefore, there was no need to discuss much

> *less record findings on several issues on merits. It was totally uncalled for.*
> *17. So far as the impugned order is concerned, the High Court, in our view, committed jurisdictional error when it also again examined the case on merits and set aside the judgment of the first Appellate Court and restored the judgment of the Trial Court. The High Court, in our opinion, should not have done this for the simple reason that it was only examining the legality of the remand order in an appeal filed under Order 43 Rule 1(u) of the Code. Indeed, once the High Court came to a conclusion that the remand order was bad in law then it could only remand the case to the first Appellate Court with a direction to decide the first appeal on merits."*

11. Relying on the above judgment, Mr. Sharma, learned counsel submits that the learned first appellate court has erred in passing the impugned order that too on a presumption that Plot Nos. 161 and 99 of Khata No. 313, adjacent to the G.T. Road, however, the fact remains that the pleader commissioner has already submitted the report, where he has stated that in plot No. 161, the appellant/defendant is coming in long standing physical possession by constructing chhawani as well as pucca well of the cost of Rs. 2.5 lakhs, whereas the respondents/plaintiffs were allotted Plot no. 99 measuring an area of 41 decimals and according to the pleader commissioner, it is equally valuable and also lies close to G.T. Road and that is in possession of plaintiff/respondents. He submits that several plots have been divided between the parties, however, the learned first appellate court has committed an error in passing the said order by way of remanding the matter back to the learned trial court.

12. On these grounds, learned counsel appearing for the

appellant submits that the impugned judgment may kindly be set aside.

13. On the other hand, Mr. Birendra Kumar, learned counsel appearing for the respondents/plaintiffs submits that the learned first appellate court has given a clear-cut finding that Plot No. 161 is allotted to the appellant herein i.e. adjacent to the G.T. Road and more valuable and in view of that the learned first appellate court has rightly passed the said order. He next submits that in Order-26 Rule-13 and 14 of CPC, the procedure of carving out the property of the proportionate share has been prescribed through the Commissioner and as such, the learned first appellate court has rightly passed the order by way of remanding the matter back to the learned trial court. On these grounds, he submits that the impugned judgment may not be interfered with.

14. In view of the above submissions of learned counsel appearing for the parties, the court has gone through the materials available on record including the trial court records and finds that admittedly original plaintiffs namely Nandowa Teli, Tulsi Teli and Prayag Teli instituted Partition Suit, being Partition Suit No. 93/1970 against Heraj Teli, Sita Ram Teli, Ashoke Teli (minor at relevant time) and others, before the Court of Sub-Judge, Hazaribag for partition in favour of the plaintiffs and a separate Takhta of half be carved out of the lands of Schedule 'B' and be allotted to the plaintiffs and Khas possession thereof be given to the plaintiffs by appointment of an Amin or Pleader Commissioner. It further transpires that the said partition suit was decided by the judgment dated 20.03.1975 and preliminary decree was prepared, which was challenged by both the parties and plaintiffs/respondents preferred appeal, being Title Appeal No. 12 of 1975 and the defendant Nos. 1 to 3 have also preferred separate appeal being Title Appeal No. 9 of 1975, which was further decided by

learned 3rd Additional District Judge, Hazaribagh by the common judgment and decree dated 21st of June, 1976, passed in Title Appeal No. 12 / 1975 and T.A. No. 9/1975 and allowed T.A. No. 12 of 1975 and dismissed T.A. No. 9 of 1975 and hold that the plaintiffs are entitled to get partition decree in respect of all the lands described in Schedule-B of the plaint, in which, they have eight anna share being descendants of Sambodh and entitled to get their land separated by metes and bound. It further transpires that the appellant / defendant preferred Second Appeal being S.A. No. 137/76(R) against the judgment and decree dated 21st June, 1976, passed by the learned first appellate court in Title Appeal Nos. 12/1975 and 9/1975 before this Court, however, the same was dismissed in terms of order dated 1st August, 1983. Thereafter a petition was filed on 7th of April, 2003 by the plaintiffs for appointment of Pleader Commissioner for carving out their half share out of the suit land, as per the judgment and decree dated 21st June, 1976, in Title Appeal No. 12/1975, passed by the learned first appellate Court and accordingly, the Pleader Commissioner was appointed and made local investigation and conducted measurement in presence of parties and the villagers after proper valuation allocated shares of plaintiffs and defendants in Schedule B properties and submitted his report on 10th of May, 2004. It further transpires that both the sides have objected the pleader commissioner's report, which has been decided by the learned trial court and thereafter final decree has been passed. Subsequently, the final decree was challenged in the appeal being Civil Appeal No. 27 of 2007, which has been decided by the judgment dated 13.08.2018 by the learned District Judge-VII, Giridih, by way of remanding the matter to the learned trial court relating to plot Nos. 161 and 99 under Khata No.

313 and direction was issued to appoint the pleader commissioner and proportionate share be divided so far as these two plots are concerned.

15. In the impugned judgment, the learned first appellate court has held that due to objection upon some of the plots, allocated to the defendants/respondents and in view of the pleader commissioner report, it has been recorded in the said order that these plots were more valuable, but the learned court on perusal of the pleader commissioner report has recorded that the vast area of land has been divided between the parties by way of carving out and it is not possible to anyone to satisfy each of the parties and on perusal of the pleader commissioner report, it transpires that the pleader commissioner has classified the land in two categories and valued accordingly and therefore equal share has been allocated to the parties to the best of the capacity of the pleader commissioner. In spite of these findings of the learned appellate court and accepting the pleader commissioner report, the learned first appellate court has remanded the matter for reallocation of plot Nos. 161 and 99 under Khata No. 313, which appears to be erroneous.

16. Rules-23, 23(A), 24 and 25 of Order-41 of the CPC stipulates as under:-

> *"**23. Remand of case by Appellate Court. -***
> *Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its*

original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23A. Remand in other cases. - Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a retrial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.

24. Where evidence on record sufficient, Appellate Court may determine case finally. -

Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which Appellate Court proceeds.

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from. -

Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor

[within such time as may be fixed by the Appellate Court or extended by it from time to time.]"

17. In light of Rule-24, the evidence upon the record is itself sufficient to enable the Appellate Court to determine the case finally and Rule-25 further stipulates that the learned appellate court was empowered to frame the issue and send the said issue to the learned trial court and record the evidence and by appreciating the said evidence, the learned appellate court can give the findings and these rules have not been followed by the learned first appellate court and in absence of doing so, the learned first appellate court has remanded the matter back to the learned trial court that too after holding that the pleader commissioner report is good one.

18. There is no cogent reason in the judgment of the learned first appellate court as to why the said remand is necessary. It is well settled that the remand order cannot be passed in a routine manner to avoid the time in litigation and on these issues, the judgments relied by Mr. Sharma, learned counsel appearing for the appellant in the cases of ***Shivakumar & Ors. (Supra)*** and ***J. Balaji Singh (Supra)*** are very clear on the point when the matter can be remanded to the learned trial court. The learned first appellate court has held that it is difficult to satisfy each and every person and further the pleader commissioner report was found as good one, however, in spite of that the learned first appellate court has done so and remanded the matter for fresh allocation of Plot Nos. 161 and 99 under Khata No. 313, which is not in accordance with law.

19. As such, the judgment dated 13.08.2018 and the decree sealed and signed on 24.08.2018, passed by the learned District Judge-VIII, Giridh, in Civil Appeal No. 27 of 2007, is hereby, set aside and

Civil Appeal No. 27 of 2007 is restored to the file of learned District Judge-VIII, Giridih to decide the two issues, for which, he has been pleased to remand the Partition Suit No. 93/1970 to the court of learned Sub-Judge-I, Giridih.

20. This appeal is allowed and disposed of. Pending I.A., if any, stands disposed of.

21. Let the Trial Court Records be sent back to the learned concerned court forthwith.

(Sanjay Kumar Dwivedi, J.)

Dated:-26.10.2026

Amitesh/- **[A.F.R.]**