IN THE HIGH COURT OF JHARKHAND, RANCHI
M.A. No. 403 of 2023

Jugal Kishore, aged about 80 years, son of Late Deoki Nandan Singh, resident of village – Narottampur, PO – Kajra, PS – Suryagarha, District – Lakhisarai Old, District – Munger, at present residing at Mohalla Chak Hanumantikri, PO, PS, Sub-division and District - Deoghar **.... Appellant**

-- Versus --

Krishna Kant, son of Prabhavati and Ramji Singh, resident of village – Majhol, PO – Dhoria, PS – Dhoria, Bariyarpur, District – Begusarai (Bihar), presently residing at Mohalla Hanumantikri, PO, PS, Sub-division and District - Deoghar **.... Respondent**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellant	:-	Mr. Atanu Banarjee, Advocate
	:-	Mr. Abhay Shankar, Advocate
	:-	Mr. Aditya Banerjee, Advocate
	:-	Shezal Gupta, Advocate
For the Respondent	:-	Mr. Rupesh Singh, Advocate

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*05/**28.10.2026*** Heard Mr. Atanu Banarjee, learned counsel appearing for the appellant and Mr. Rupesh Singh, learned counsel appearing for the sole respondent.

2. This appeal has been preferred under Order 43 Rule I(u) of the Code of Civil Procedure, 1908 challenging the judgment dated 23.08.2023 and decree signed on 31.08.2023 passed by learned District Judge-II, Deoghar passed in Title Appeal No.13 of 2005 whereby the learned District Judge-II, Deoghar has been pleased to set aside the judgment dated 08.06.2005 and decree sealed and signed on 20.06.2005 passed in Title (Ev.) Suit No.13 of 1993 passed by learned Civil Judge (Sr. Div.-II), Deoghar and remanded back the case to the learned Court to proceed as per law and has been pleased to allow the appeal being Title

Appeal No.13 of 2005.

3. Mr. Atanu Banerjee, learned counsel appearing for the appellant submits that the learned trial court, after scrutinizing the oral and documentary evidence, arrived at a categorical finding of fact that the land covered under the defendant's title deed (Exhibit – J/4) is distinct, separate and different from the suit property described in Schedule-A. He further submits that the learned appellate court in the impugned judgment did not even touch upon, analyze, or reverse this core finding regarding the identity of the land and instead of demonstrating how the trial court's analysis of the deeds was erroneous, the appellate court merely made a generalized, sweeping observation that the trial court had "cherry picked lines from the evidence". He then submits that the learned trial court's judgment dated 08.06.2005 was passed after a full trial where numerous witnesses were examined. He next submits the learned appellate court himself was competent to decide the appeal, however, he has remanded the title suit to the learned trial court to decide afresh which is not in consonance with the law regarding the remand and the provisions laid under Order 41 Rule 23, 23(A), 24 and 25 have not been followed. By way of referring Rule 23, Mr. Banerjee, learned counsel appearing for the appellant submits that the manner of remand is stipulated therein and submits that upon a preliminary point if the learned appellate court finding that the judgment of learned trial court is perverse then the remand can be made in light of Rule 23. He next submits that in light of Rule 23(A) the remand in other cases is prescribed therein and if on a preliminary point the decree reversed by the appellate court then retrial is considered necessary and the remand order can be passed. By way of making emphasis upon Rule 24 of Order

41, he submits that evidence on record is sufficient and appellate court is competent to decide the appeal. By way of referring Rule 25 of order 41 CPC, he submits that option was also there upon the learned appellate court to frame the issue and send the said particular reference to the learned trial court and after having the answer the learned appellate court was competent to decide the same. He next submits that however the learned appellate court without following these aspects has erroneously remanded the matter after setting aside the judgment and decree passed by the learned trial court. He has gone to extent in arguing by way of referring paragraph No.5.1 and submits that the heading has been made by the learned appellate court of points of determination, however, in that paragraph there is no point framed. He next submits that learned first appellate court by way of making the chart of the property and exhibits have concluded about the property which sale deed or property was leased on. He next submits that the learned appellate court only on the ground that the number of witness and documentary evidences are voluminous and unnecessary evidences have been allowed by the learned trial court without its control on the record and held that "there are cherry picked lines from the evidences" and the documentary evidence has not been elaborately discussed and remanded the matter after setting aside the judgment and decree which is not in accordance with law. He next submits that this Court is only testing the remand order under Order 41 rule 23(A), as such this Court is also not required to go into the merit of the case. According to him, the only test has to be done that as to whether the remand order is correct or not.

4. Mr. Banerjee, learned counsel appearing for the appellant relied in the judgment of Hon'ble Supreme Court in the case of ***Murthy and***

Others versus C. Saradambal and Others reported in (2022) 3 SCC 209 wherein at paragraph No.60 it has been held as under :-

> ***60.*** *Before parting with this case, we would like to reiterate that in this case, the High Court has dealt with the judgment of the learned Trial Judge in a short cut method, bereft of all reasoning while reversing the judgment of the Trial Court both on facts as well as law. It is trite that the Appellate Court has jurisdiction to reverse, affirm or modify the findings and the judgment of the Trial Court. However, while reversing or modifying the judgment of a Trial Court, it is the duty of the Appellate Court to reflect in its judgment, conscious application of mind on the findings recorded supported by reasons, on all issues dealt with, as well as the contentions put forth, and pressed by the parties for decision of the Appellate Court. No doubt, when the Appellate Court affirms the judgment of a Trial Court, the reasoning need not to be elaborate although reappreciation of the evidence and reconsideration of the judgment of the Trial Court are necessary concomitants. But while reversing a judgment of a Trial Court, the Appellate Court must be more conscious of its duty in assigning the reasons for doing so.*

5. Relying on the above judgment, Mr. Banerjee, learned counsel appearing for the appellant submits that reasoning given by the learned trial court has not been answered by the learned first appellate court and in view of that also the remand order is bad when the learned first appellate court himself was competent to decide the appeal as all materials were there in the form of trial court record.

6. Mr. Banerjee, learned counsel appearing for the appellant further relied in the case of ***P. Purushottam Reddy and Another verus Pratap Steels Ltd. reported in (2002) 2 SCC 686*** wherein at paragraph No.10 it has been held as under :-

> ***10.*** *The next question to be examined is the legality and propriety of the order of remand made by the High Court. Prior to the insertion of Rule 23A in Order 41 of the Code of Civil Procedure by CPC Amendment Act 1976, there were only two provisions contemplating remand by a court of appeal in Order 41 of CPC. Rule 23 applies when the trial court disposes of the entire suit by recording its findings on a preliminary issue without deciding other issues and the finding on preliminary issue is reversed in appeal. Rule 25 applies when the appellate court notices an omission on the part of the trial court to frame or try any issue or to*

determine any question of fact which in the opinion of the appellate court was essential to the right decision of the suit upon the merits. However, the remand contemplated by Rule 25 is a limited remand in as much as the subordinate court can try only such issues as are referred to it for trial and having done so the evidence recorded together with findings and reasons therefore of the trial court, are required to be returned to the appellate court. However, still it was a settled position of law before 1976 Amendment that the court, in an appropriate case could exercise its inherent jurisdiction under Section 151 of the CPC to order a remand it such a remand was considered pre-eminently necessary ex debito justitiae, though not covered by any specific provision of Order 11 of the CPC. In cases where additional evidence is required to be taken in the event of any one of the clause of Sub-rule (1) of Rule 27 being attracted such additional evidence oral or documentary, is allowed to be produced either before the appellate court itself or by directing any court subordinate to the appellate court to receive such evidence and send it to the appellate court. In 1976, Rule 23A has been inserted in Order 41 which provides for a remand by an appellate court hearing an appeal against a decree if (i) the trial court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in appeal and a retrial is considered necessary. On twin conditions being satisfied, the appellate court can exercise the same power of remand under Rule 23A as it is under Rule 23. After the amendment all the cases of wholesale remand are covered by Rule 23 and 23A. In view of the express provisions of these rules, the High Court cannot have recourse to its inherent powers to make a remand because as held in Mahendra v. Sushila (AIR 1965 SC 365 at p. 399), it is well settled that inherent powers can be availed of ex debito justitiae only in the absence of express provisions in the Code. It is only in exceptional cases where the court may now exercise the power of remand de hors the Rules 23 and 23A. To wit the superior court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20 Rule 3 or Order 11 Rule 31 of the CPC and hence it is no judgment in the eye of law, it may set aside the same and send the matter back for re-writing the judgment so as to protect valuable rights of the parties. An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23A or Rule 25 of the CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore must be avoided.

7. Relying on the above judgment, Mr. Banerjee, learned counsel appearing for the appellant submits that it is only in exceptional cases where the Court may exercise the power of remand and in a routine manner remand is not expected.

8. Mr. Banerjee, learned counsel appearing for the appellant also relied in the judgment of Madras High Court in the case of ***Guruvammal and Another Vs. Chinnamuniyandi and Another reported in 2014 (3) MWN (Civil) 125*** wherein at paragraph No.7(iii) it has been held as under :-

> ***7.*** *Before testing the correctness of the order of remand passed by the first appellate court which is the issue involved in the appeal, I would like to consider the judgments of the Hon'ble Supreme Court and this Court in this regard.*
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> ***(iii)*** *In Subbiah Konar and three others vs. State of Tamilnadu through District Collector, Tirunelveli and other reported in 2003 (3) MLJ 524, this Court in paragraph 14 has held as follows :*
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> > ***"14.*** *It is well settled that remand is not meant to give another chance to the parties to fill up the lacuna or to substantiate what the plaintiffs or defendants have failed to prove or establish. Remand is also not permissible to fill up the lacuna or to enable the parties to let in fresh evidence when the very plaintiffs who come forward with the suit have failed to establish their case."*

9. Relying on the above judgment, Mr. Banerjee, learned counsel appearing for the appellant submits that the remand cannot be in garb of another chance to the parties to fill up the lacuna.

10. In the aforesaid background, Mr. Banerjee, learned counsel appearing for the appellant submits that the judgment may kindly be set aside and the Title Appeal No.13 of 2005 may kindly be restored to the file of learned first appellate court to decide the same on merit.

11. On the other hand, Mr. Rupesh Singh, learned counsel appearing for the sole respondent opposes the prayer and submits that this litigation is since the year 1993 and both the sides have travelled twice before this Court in Civil Revision and Writ Petition and Civil Revision was filed by the appellant herein and the pleading was allowed to be amended before the learned trial court and direction was issued to decide the said suit. He further submits that after amendment was allowed the

dependents have moved before this court in Writ Petition which was subsequently dismissed by this court and thereafter the suit has been decided. According to Mr. Singh, learned appellate court has found infirmities with the pleadings and in view of that he has rightly remanded the Title (Ev.) Suit No.13 of 1993 to decide afresh. He then submits that the learned appellate court finding the infirmities has rightly remanded the matter. He next submits that in absence of pleading evidence has been laid and in view of that learned first appellate court has rightly remanded the title suit to decide afresh. On these grounds, he submits that the appeal may kindly be dismissed.

12. In view of the above submission of learned counsel appearing for the parties and after going through the judgments of learned trial court as well as learned first appellate court, it transpires that the learned trial court by the judgment dated 08.06.2005 has been pleased to decree the suit in favour of the appellant/plaintiff herein. The learned trial court has elaborately dealt with the pleadings and the evidences oral as well as documentary and thereafter has been pleased to decree the suit.

13. On perusal of the judgment of learned first appellate court, the Court finds that the learned appellate court at paragraph No.5.1 made the points for determination, however, what point has been framed to decide the appeal that is not disclosed in the said paragraph. The basis of coming to the boundaries of the sale deed and of actual ground reality the clear-cut finding is also not there in the judgment of the learned first appellate court.

14. Learned first appellate court has held that the number of witnesses and documentary evidences are voluminous and unnecessary evidences have been allowed by the learned trial court without its control

on the record and there are cherry picked lines from the evidences and neither of the documentary evidences have been elaborately discussed and only to dispose of the matter the learned trial court has passed the judgment which appears to be error in light of the judgment of learned trial court itself as the learned trial court's judgment is a reasoned order and when the materials are there the learned first appellate court himself is competent to decide the appeal on merit after framing the point and met out the reasons provided by the learned trial court in the judgment, however, learned first appellate court has not done so.

15. Rule 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.]*

16. 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 aspects have not been taken care of by the learned first appellate court.

17. The issue in question was the subject matter before the Hon'ble Supreme Court in the case of ***J. Balaji Singh versus Diwakar Cole and Ors. reported in (2017) 14 SCC 207*** wherein at paragraph Nos.14 to 17 it has been held as under :-

> ***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.*
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> ***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.*
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> ***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.*
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> ***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.*
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> ***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.*
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> ***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.*
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> ***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.*

18. The cogent reading of Rules 23, 23A and 24 of Order 41 clearly suggests that when the available evidence is sufficient to dispose of the matter the proper course of an appellate court is to follow the mandate of Rule 24 of Order 41 of CPC and determine the suit finally only in such cases where the decree in challenge reverse in appeal and retrial is considered necessary that the appellate court shall above the courts of remanding the case. It is well settled that the order of remand is not to be passed in a routine manner as an unwarranted order of remand

enlarge the life of litigation without serving the cause of justice. This aspect has been further answered by Hon'ble Supreme Court in the case of ***Shivakumar and Ors. versus Sharanabasappa and Ors. reported in (2021) 11 SCC 277.***

19. The aforesaid aspects and when the case of remand will arise that has also been answered in the judgments relied by Mr. Banerjee in the cases of ***Murthy and Others versus C. Saradambal and Others (supra), P. Purushottam Reddy and Another verus Pratap Steels Ltd. (supra)*** and ***Guruvammal and Another Vs. Chinnamuniyandi and Another (supra).***

20. In view of above facts, circumstance, reasons and analysis the Court finds that the remand order passed by learned first appellate court is not in accordance with law as such judgment dated 23.08.2023 and decree signed on 31.08.2023 passed by learned District Judge-II, Deoghar is hereby set aside and Title Appeal No.13 of 2005 is restored to the file of learned first appellate court for fresh consideration in light of judgments of Hon'ble Supreme Court cited (supra). In the result, this Miscellaneous Appeal is allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)

Dated 28.10.2026
Sangam/
A.F.R.