
(1989) 01 MP CK 0027

In the Madhya Pradesh High Court

Case No : Miscellaneous (F.) Appeal No. 423 of 1985

Ghasiram Jain

APPELLANT

Vs

Kunjilal (dead) through L.Rs. Gunpal and Others

RESPONDENT

Date of Decision : 03-01-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1

Citation : (1991) 2 MPJR 346 : (1992) 37 MPLJ 103 : (1992) MPLJ 103

Hon'ble Judges : Faizanuddin, J

Bench : Single Bench

Advocate : Ravish Agarwal, for the Appellant; K.L. Issrani, for Respondent Nos. 1(a), (b) and 2, for the Respondent

Final Decision : Dismissed

Judgement

Faizanuddin, J.

This appeal under Order 43, Rule I(u) of the Code of Civil Procedure has been directed by the plaintiff/appellant against the order dated 31st October, 1985, passed by the IIInd Additional Judge to the Court of District Judge, Sagar, in Civil Appeal No. 12-A of 1983, remanding the case to the trial Court deciding it afresh.

The facts giving rise to the present appeal may be shortly stated thus : The plaintiff/appellant had instituted a suit for possession of certain land and damages amounting to Rs. 100/- on the basis of his title over the said land under a registered sale-deed. The defendants/respondents resisted the suit by denying the plaintiff's claim by pleading that the plaintiffs vendor had no substituting title to the suit land so as to enable him to transfer the same to the plaintiff. The defendants' pleaded that the land belonged to them and they were in possession of the same by virtue of their own rights. The trial Court dismissed the suit by judgment and decree dated 19th September, 1972. The plaintiff went up in appeal and made an application dated 21st March, 1973, before the lower appellate Court for appointment of a Commissioner to make measurements of

the land. The said application was rejected by the lower appellate Court and the appeal was also dismissed on 6-8-1974.

The plaintiff/appellant preferred second appeal before this Court being second appeal No. 742 of 1974. This Court by its order dated 19-2-1982 set aside the judgments and decrees of the two Courts below and remanded the case to the trial Court for a fresh decision with the directions :

"(i) that the trial Court shall appoint a person to whom it considers suitable as Commissioner, in case the parties do not agree on any particular person, to do the measurement in terms of the prayer contained in the application dated 21st March, 1973 referred to hereinabove of the plaintiff and to report whether the suit land is covered with that land :

(ii) that after the report of the Commissioner is received, objections would be invited from the parties on the report :

(iii) that if any of the parties wants to cross-examine the Commissioner, an opportunity would be given and thereafter, after hearing the parties afresh on the basis of the report of the Commissioner and the statement of the Commissioner, if any, the evidence already on record would decide the suit according to law on its merits."

After receipt of the records with the remand order, the learned trial Judge appointed Revenue Inspector as Commissioner to make necessary measurements in accordance with the remand order. The Commissioner submitted his report on 27-1-1983 to the trial Court. The trial Court thereafter by its judgment and decree dated 22-9-1983 decreed the plaintiffs suit for possession and damages.

The defendants/respondents challenged the said judgment and decree in appeal before the IIInd Additional Judge to the Court of District Judge, Sagar. The defendants made an application on 3-9-1985 for appointment of Commissioner and fresh measurements before the lower appellate court which was rejected on 9-9-1985. The defendants/respondents made another application on 14-2-1984 before the lower appellate Court under Order 41, Rule 27 of the Code for admission of additional evidence. The defendants desired to produce in evidence two sale-deeds dated 8-7-1942 and 5-11-1957 which were already on record as well as an application purporting to have been made by one Nathuram, the late husband of defendant/respondent No. I(c) Mst. Saribai to the Naib Tahsildar, Banda. The lower appellate Court by its impugned order dated 31-10-1985 allowed the said application by holding that the said documents were necessary for just decision of the case and, therefore, set aside the judgment and decree of the trial Court and remanded the case to the trial Court with a direction that the defendants be allowed an opportunity to prove the said documents with a right of rebuttal to the plaintiff/appellant. The parties were given liberty to adduce such oral and documentary evidence as they may choose and to decide the case afresh. It is this order of remand which has been challenged by the plaintiff/

appellant in this appeal.

Learned counsel for the appellant/plaintiff vehemently urged before me that this Court in its remand order dated 19-2-1982 passed in Second Appeal No. 742 of 1974 had directed the trial Court to determine the dispute upon Commissioner's report on evidence already on record as referred to in paragraph No. 3 above, which precluded the parties from producing further evidence, but the directions contained in remand order of this Court were wholly ignored by the lower appellate Court while permitting the defendants to lead further evidence and thus the lower appellate Court exceeded in exercise of its jurisdiction. In support of the aforesaid contention, the learned counsel for the plaintiff/appellant placed his reliance on a few decisions of this Court as well as of the Supreme Court which shall be discussed hereinafter.

First of all, learned counsel for the appellant invited the attention of this Court to a Division Bench decision of this Court in Budhilal Deviprasad and Another Vs. Jagannathdas Bajrangdar, , in which it has been held as under : -

"The powers and jurisdiction of the lower Court to deal with the suit, after remand, depends on the specifications of the remand order. Where the order of remand lays down any limits for the enquiry to be made by the lower Court, that Court has no jurisdiction to enter into any question which falls outside these limits.

Here, it may be pointed out that in the aforesaid decision, the plaintiff of that case had filed a suit for redemption which was contested by the defendants on the ground that the transaction was an out and out sale and not a mortgage. The trial Court dismissed the suit by holding that the plaintiff could not be permitted to lead oral evidence to show it was a transaction as between the creditor and debtor and not as between the vendee and a vendor, the same being prohibited u/s 92 of the Evidence Act. The dismissal of the suit was affirmed in first appeal; but the High Court in second appeal reversed both the aforesaid judgments and decrees and remanded the case back to trial Court for a fresh decision after permitting the parties to lead such evidence for proof or disproof of an antecedent agreement pleaded by the plaintiff, as they may choose to lead. After taking evidence, the trial Court held the antecedent agreement proved and, therefore, decreed the suit. On appeal, the Additional District Judge set aside the judgment and decree and dismissed the plaintiff's suit on the ground that the suit land was not recorded as plaintiffs' land in the village papers of 1948-49 and therefore the same was not saved to him as his home-farm under the Madhya Pradesh Abolition of Proprietary Rights Act, 1950 but it had vested in the State. The matter again came up in second appeal before the High Court which was allowed. The judgment and decree of the lower appellate Court were set aside and the case was remanded to first appellate Court for a fresh decision on merits, holding inter alia, that the dismissal of the plaintiffs' suit on the ground that the suit land vested in the State was manifestly incorrect.

On remand, the lower appellate Court considered the appeal on merits and in view of the fact that the antecedent agreement pleaded by the plaintiff had been found proved, affirmed the judgment and decree of the trial Court. The defendants again appealed to the High Court. The learned Single Judge upheld the decree but on a different ground and granted leave to appeal under clause (10) of the Letters Patent only on the ground that an important question of law has arisen for consideration, viz., whether a remand order based on a ruling of this Court which is later held to be erroneous by the Supreme Court can be reconsidered in appeal against the decision after remand. The Division Bench took the view that there cannot be two opinions that a decision of an appellate Court remanding a case under Rule 23 of Order 41 of the CPC cannot be questioned before the same appellate Court in an appeal against the decision of the lower appellate Court after remand. It was in this context that the Division Bench in the case of Budhilal (supra) took the view that where the order of remand lays down any limits for enquiry to be made by the lower Court, that Court has no jurisdiction to enter into any question which falls outside those limits. The use of the words "that Court has no jurisdiction" are referable to the Court to which the remand is made with certain specific directions and therefore that Court has to exercise its powers within the scope of the order of remand. But once the Court to which the remand is made with certain directions, passes the order or judgment within the limits of the remand order and that order adjudgment is subjected to further appeal to a higher Court, the higher Court would be free to exercise its jurisdiction on the merits of the whole case without any limitations, particularly when the higher Court while remanding the case back to lower Court has not taken any decision on merits on any of the questions in controversy between the parties.

Reliance was also placed on the decision in Shambhulal v. Union of India 1969 MPLJ 46, in which it was held that where a specific direction is given in the order of remand for a particular mode of trial, the trial Court must on remand, adopt that procedure and no other. In the present case as stated earlier, the trial Court to whom the remand was made by this Court had adopted the procedure and acted within the scope and limits of the remand order. It is the lower appellate Court which is said to have exceeded that limit and in my opinion, rightly so because the jurisdiction of the appellate Court could not be said to have been limited as the High Court itself had not taken any decision in respect of any question in dispute between the parties and it was open to the appellate Court to examine the judgment and decree of the trial Court on merits and pass such order as it may consider to be just and proper in the facts and circumstances of the case. The next case on which reliance was placed is Mohan Lal Vs. Anandibai and Others, , wherein it was held that where appellate Court orders remand with direction to lower Court to consider particular plea and with liberty to plaintiff to amend the plaint, the order cannot be constituted as allowing the plaintiff to raise a new plea. In the case of Mohanlal (supra) the High Court in Second Appeal had held that material was not sufficient to decide the question of res

judicata and therefore the High Court set aside the judgment and decree of the two Courts below and remanded the case to the trial Court with a specific direction to permit the parties to make amendment in their pleadings in respect of the plea of res judicata and also directed the trial Court to consider prayer for allowing other amendments, but added a condition that amendments with respect to pleas of fraud, collusion or antedating in respect of the gift deed in favour of the plaintiff were not to be permitted. Against this order of the High Court an appeal was preferred before the Supreme Court by defendants which was dismissed. While dismissing the appeal, their Lordships of the Supreme Court in paragraph No. 9 of the report observed that those amendments which could be allowed must relate to the plea of res judicata and the said order of the High Court cannot be interpreted as giving liberty to the defendant to raise any new pleas altogether which were not raised at the initial stage and therefore it was observed that other amendments have to be those which are consequential to the amendment in respect of the plea of res judicata. Thus, in the case of Mohanlal (supra) the question of res judicata alone remained open and the limits and the scope of the amendment which may be sought were circumscribed to the amendments in connection with the plea of res judicata and not otherwise. That being so, the trial Court could not have gone beyond the scope and limit of the said order of remand. Almost similar is the decision in the case of Rukhmanand v. Dinbandhu 1971 MPLJ159.

Learned counsel for the appellant/plaintiff also relied on the decision in State of M. P. v. D.K. Jadhav 1972 MPLJ 349 , 1972 J LJ 185, in which it was held that the Court to which the case is remanded cannot decide question, not raised before the superior Court remanding the case, but in the present case before this Court such is not the position. In the present case, the High Court had not determined any disputed questions between the parties and had not taken decision on merits on any controversial points and the remand was made to the trial Court and the trial Court adopted the procedure as directed in remand order. The position may be different in a case where the higher Court expressed its opinion in respect of some of the disputed questions and remanded the case to the lower Court with specific direction in respect of certain other issues then in that event the lower Court has to act within the scope of specific direction and cannot go into questions about which the opinion is already expressed by the higher Court. But such is not the situation here in this case where the High Court neither expressed any view nor decided any of the controversial questions between the parties. The last case on which reliance was placed is Mahant Narayandas v. Registrar, Public Trusts 1979 MPLJ 227, in which a Division Bench of this Court has laid down that the principle of res judicata applies also as between two stages of same litigation and findings recorded in any order of remand by the High Court are binding on the parties as well as the High Court in subsequent proceedings. In the aforesaid decision, the High Court in the remand order disagreed with the views expressed by the trial Court on most of the issues and therefore the order of the trial Court was set aside and the parties had agreed that the conclusions reached on several

issues by the High Court in the said remand order were binding on both the parties. But, in the present case, this Court had not taken any decision on merits in respect of the controversy between the parties as would be clear from the remand order dated 19-2-1982 passed in Second Appeal No. 742 of 1974 and, therefore, the question of the application of the principle of res judicata does not arise here.

It is no doubt well settled that when a higher Court remands the suit to the lower Court for a decision afresh with certain specific directions the jurisdiction of the Court to which the remand is made depends upon the terms of the remand order and that Court to which the remand is made cannot consider the matters other than those specified in the remand order. In other words, if the higher Court remands the case to the trial Court the jurisdiction of the trial Court is fortified by terms of remand order and the specific direction contained therein. But, if the higher Court in its remand order has not expressed any view on merits on the questions in controversy between the parties and once the trial Court acts within the scope and directions contained in the remand order and passes the judgment and order which is subjected to further appeal, the said order or judgment shall be open to challenge on all possible grounds and in that event the jurisdiction of the appellate Court cannot be deemed to have been circumscribed or curtailed by the remand order and the appellate Court would be within its jurisdiction to exercise its power to decide the appeal on merits, on all the points and grounds raised before it. In the present case, it has not been isputed that the trial Court had acted within the scope and limitations imposed by the remand order and, therefore, it cannot be said that the trial Court had acted beyond its jurisdiction. The judgments and decrees of the trial Court were challenged in first appeal and there being no embargo the first appellate Court was justified in exercising its jurisdiction on the questions raised before it as the High Court had not taken any decision in respect of any of the points in controversy between the parties. It therefore cannot be said that the lower appellate Court had acted beyond its jurisdiction.

For the reasons stated above, the appeal fails and is hereby dismissed, but without any order as to costs.