
(2025) 03 JH CK 1338
In the Jharkhand High Court
Case No : M.A. No. 54 Of 2008

Jwala Pd. Tiwari

APPELLANT

Vs

Tetar Chamar

RESPONDENT

Date of Decision : 03-03-2025

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 72

Citation : (2025) 03 JH CK 1338

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Amit Kumar Das, Swati Shalini, Akhouri Sankalp

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

1. The order of remand passed under Order XLI Rule 25 of the CPC by the first Appellate Court in Title Appeal No. 42/2005 is under challenge before this Court by the plaintiffs/appellants.
2. Plaintiffs/appellants filed Title suit No. 97/1990 for declaration of right, title and interest over suit property with respect to 12.09 acre of land as detailed in Schedule of the plaint.
3. As per the case of the plaintiffs, the suit land was surrendered by the recorded tenant to the ex-landlord and proprietor, namely Jairam Tiwary by filing a petition in the year 1919 addressed to the Deputy Commissioner, Palamau which was registered as Case No. 118/1919-20. The surrender of land was accepted and it was allotted to Ramsundar Tiwary who was the father of Jairam Tiwary and Tiwary Sheonandan Ram.
4. Further case of the Plaintiff is that, Partition Suit bearing No. 96/1922 was instituted by Tiwary Parmeshwar Ram against Jairam Tiwary and others and in the said Partition Suit, Plot No. 1355 area 4.35 acre and Plot No. 521 entire area

0.93 acres of Village Ornor was allotted to Jairam Tiwary and Tiwary Sheonandan Ram in joint Takhta. Tiwary Sheonandan Ram died leaving behind three sons, namely Bindyachal Tiwary, Ram Kishore and Nandkishore Tiwary. Bindyachal Tiwary died issueless, Ramkishore Tiwary died leaving behind only one son Nagina Tiwary, who sold his interest in favour of plaintiff no. 1 through registered sale-deed. Nandkishore Tiwary died leaving behind plaintiff/appellant Nos. 2-8. Jairam Tiwary, after vesting the assessment of rent in favour of the plaintiff for the suit land and the demand was running in their favour. One Bhutan Mahto was the co-sharer of the plaintiffs and he was granted Banda Purcha for the land of plot no. 521, but on his death his heirs sold away their interest in favour of the plaintiffs.

5. The case of the defendant is that land under Khata No. 198 consists of 4 plots i.e., 1135, 1155, 521 and 1371, whereas the suit has been brought with respect to only two plots i.e., 1135 and 521. It is also pleaded that these two plots were not the subject matter of Partition Suit No.96/1922 and they were in Khas possession of the recorded tenant and ancestors were paying rent to ex-landlord.

6. It is further case of the defendants that land assessment made in favour of the plaintiffs' name, is without notice and knowledge of the defendants.

7. On the basis of the pleadings of the parties the following main issues were framed: -

III. Are the plaintiffs entitled to claim suit-land as surrendered by Lochan Chamar and Bechan Chamar who were recorded raiyats of khata no. 198 represented by the defendants their legal heirs?

IV. Is the story of acceptance of surrender by the D.C. in the year 1919, true, and correct?

V. Is the return filed by the plaintiffs at all related to the suit land?

VII. Was the suit land involved in p.s. 96/1922 and is the decree of that suit binding upon defendants because their ancestors were not parties to that suit?

8. Learned Trial Court recorded a finding in favour of the plaintiffs and decreed the suit.

9. The learned First Appellate Court set aside the judgment and decree and framed the following issue: -

If the claim of title over the suit land on the basis of surrender deed was barred under Section 72 of the C.N.T. Act, and remanded the case for adjudication afresh by the Trial Court.

10. It is argued by the learned counsel on behalf of the appellants that learned Trial Court had recorded a specific finding regarding the genuineness of the surrender as discussed in Issue Nos. III, IV, V and VII, therefore, remand of the case on the issue framed was uncalled for. As a matter of fact, the plaintiffs had

perfected their title and possession over the suit land since the Year, 1919 and without assigning reason for interfering with the finding, the judgment has been set aside and the matter has been remanded.

11. It is argued by learned counsel on behalf of appellant that there was per se no violation so far Section 72 of the CNT Act is concerned as the requirement of seeking prior permission from the Deputy Commissioner before accepting a surrender of land was introduced in the Act by way of amendment in 1947, whereas in the present case, the land in question was surrendered in 1919 through the Deputy Commissioner, Palamau which was registered as Case No.118/1919-20, therefore. The very ground on which the case was remanded for adjudication afresh, was misconceived.

12. Learned counsel on behalf of respondents seeks adjournment.

13. This is an old case where suit was filed in 1990 which was disposed of vide judgment and decree on 10th May, 2005 against which Title Appeal no.42/05 was preferred and was disposed by the impugned judgment on 14.01.2008.

14. This appeal was already part heard on 13.02.2025 and 20.02.2025 and at this stage, I am not inclined to grant any further adjournment for argument.

15. Law so far as remand is concerned, is settled that Appellate Court can remand the case before it where the court from whose decree an appeal was preferred, had disposed of the suit upon a preliminary point and that decree was reversed in appeal. There are two options available to the appellate court i.e., it may record the evidence itself by permitting the parties to produce evidence before it as per Order XLI Rule 27 of CPC or direct the Court from whose decree the appeal under consideration has arisen, to do so. Order XLI Rule 24 further provides that where the evidence are on record the Appellate Court is empowered to resettle the issues and decide the case afresh in first appeal. It has been held in Shiv Kumar @ Ors Vs Sharanbasappa, 2020 SCCOnLine SC 385

“25.4. 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.”

16. The issue that has been framed by the First Appellate Court and remanded to

the learned trial Court, was not raised earlier before the trial Court. The First Appellate Court completely misdirected itself to hold that there was violation of Section 72 of the CNT Act.

17. So far the requirement of previous sanction of Deputy Commissioner is concerned, that was inserted by CNT Amendment Act, 1947 whereas in the present case, the surrender was made by the defendants way back in 1919 and thereafter, it was settled in favour of plaintiff.

18. The Istifanama has been adduced into evidence and marked as Exhibit-1 which is addressed to the Deputy Commissioner himself therefore, question of violation of Section 72 of the CNT Act did not arise.

19. Under the circumstance, impugned order is set aside and the Title Appeal No. 42/2005 is restored to its file, the learned First Appellate Court is directed to dispose of the Title Appeal within six months from the date of order. Both the parties will appear before the First Appellate Court, Daltonganj on 2nd April 2025, and in the event of their non-appearance, it shall be deemed they are not appearing despite notice and the learned Appellate Court shall proceed with the appeal accordingly.

Miscellaneous Appeal is allowed. Interlocutory Application, if any, is disposed of.