
(2009) 07 CHH CK 0020
In the Chhattisgarh High Court
Case No : M.A. No. 718 of 2006

Kalyan

APPELLANT

Vs

Jeevanlal and Another

RESPONDENT

Date of Decision : 06-07-2009

Acts Referred:

Citation : (2009) 4 MPJR 6

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—This appeal is directed against the judgment & decree dated 21.2.2006 passed by the second additional district judge (F.T.C.), Mungeli, in civil appeal no. 10-A/2005, whereby the learned second additional district judge has set aside the judgment & decree dated 4.3.2005 passed by the civil judge class-I, Mungeli, in Civil suit no. 30A/96 and remitted the case for fresh trial after affording an opportunity of hearing to the parties for local inspection by appointing commissioner.

2. Judgment & decree is challenged on the ground that the appellate court was required to decide the appeal on the basis of fact and material available on record and was required to decide the appeal on all the grounds raised by the parties. Remand of the case is an exception and the court below has illegally remitted the case.

3. I have Shri K.S. Kurre with Shri G.P. Kurre, counsel for the appellant, Shri Ravidra Agrawal, counsel for respondent No. 1 and Shri Sameer behar, Panel lawyer for the state/respondent no. 1 and perused the judgment & decree impugned and judgment & decree of the trial court.

4. Suit for declaration and possession of khasra No. 116/2 area 0.02. acre situated at Mungeli was filed by present respondent No. 1 against the present appellant on the ground that the present appellant has dispossessed respondent

No. 1 from his land. After affording an opportunity of hearing to the parties, learned civil judge class-I, Mungeli has dismissed the suit which was challenged by respondent No. 1 in civil appeal vide impugned judgment & decree. Case was remitted for affording an opportunity for local inspection by appointing a commissioner for measurement of the land.

5. In this case, undisputed facts reveal that khasra No. 1126/2 was originally owned by late Anup Das. The present appellant has purchased 0.09 acre of the land of khasra No. 1126/2 from Anup Das in the year 1976 by registered sale deed and has also purchased part of the land i.e., 0.58 acre from Parvati Bai and he is in possession of the entire land.

6. According to case of respondent No. 1 rest land i.e., 0.02 acre was purchased by the present respondent No. 1 from the legal representative of Anup Das namely, Chadraprakash and Chandresh. The present appellant has alleged that he has purchased 0.11 acre of the land in the year 1976 but erroneously and wrongly area was mentioned in the sale deed as 0.09 acre, but the appellant was in possession over 0.11 acre of the land since 1976.

7. After remand of the case, learned civil judge class-I has decided the suit which is under challenged in appeal before competent forum.

8. Learned counsel appearing for the appellant argued that even after decision of the suit after remanding the case the present appeal is maintainable. Learned counsel placed reliance in the matters of Baisnab Padhan Vs. Parma Padhan and Another, , Haridas and Another Vs. Banshidhar and Another, and Chanan Ram Vs. Kahan Singh etc., in which it has been held by the high court of Orissa, High court of Rajasthan and high court of Punjab that even after decision of civil suit after remand the appeal, judgment & decree remanding the suit is maintainable. Learned counsel further placed reliance in the matter of Shiromani Gurdwara Parbandhak Committee and Others Vs. Raja Shiv Rattan Dev Singh and Others, in which it has been held by the apex court that decree of trial court after remand by high court passed between date of application for leave to appeal and date of grant of the appeal by the Apex Court would be subject to the result of the appeal. Learned counsel also placed reliance in the matter of Mariram vs. Bhemral, M.P.W.N. 1998 (2) Note 170 in which it has been held by the high court of Madhya Pradesh that in case of sufficient description of the disputed property sufficient to identify it, remand for further description is not proper. Learned counsel also placed reliance in the matter of Harishankar vs. Shrilal, M.P.W.N. 1993 (2) Note 144 in which it has been held by the High court of Madhya Pradesh that remand is an exception and the courts are required to see that if the appeal cannot be decided on the basis of evidence, then court may remand the case for appointment of commissioner. Learned counsel also placed reliance in the matter of Dineshchandra vs. Kamlabai, MPWN 1997 (3) Note 78 in which it has been held by the High court of Madhya Pradesh that remand order cannot be passed to fill up the lacuna of the parties. Learned counsel also placed reliance in the matter of Heeralal Vs. Thakur Das, in which it has been held by the high

court of Madhya Pradesh that in case parties are unable to decide how much land is in possession of parties, such dispute can be decided by the appointment of a commissioner. Learned counsel also placed reliance in the matter of Ashwinkumar K. Patel Vs. Upendra J. Patel and Others, in which it has been held by the apex court that powers to remand the case should not ordinarily be exercised merely because in its view reasoning of lower court in some aspects was wrong. Learned counsel also placed reliance in the matter of Ravinder Kaur Vs. Ashok Kumar and Another, in which it has been held by the apex court that it is not the normal practice of the superior court to give a conclusive finding in matters which it remands for further consideration because after a conclusive finding there is nothing to be decided by the court to which the matter is remanded.

9. On the other hand, learned counsel appearing for the respondents supported the judgment & decree impugned and argued that the present appellant has claimed possession and title over 0.02 acre of the land on the basis of wrong possession and erroneous description of the sale deed but respondent No. 1 has claimed title and right of possession on the basis of sale deed.

10. According to the case of both the parties, the present appellant is in possession of 0.67 acre of the land but he is not in a position to show that which one comprising area 0.02 acre of the land is disputed land or respondent No. 1 is not able to show the identity of the land.

11. In the present case after remanding the case, the trial court has decided the case finally but in the light of the aforesaid decision, the judgment & decree passed by the trial court after remanding the case would be subject to the decision of the present appeal.

12. Pleadings of the parties reveal that originally sale deed of 0.09 acre of the land was executed in favor of the appellant by Anup Das and subsequently sale deed of 0.58 acre of the land was executed by one Parvati Bai in favour of the present appellant. Accordingly vide two sale deeds, total 0.67 acre of the land was sold to the appellant though the appellant has specifically pleaded and deposed that instead of mentioning are 0.11 acre in the sale deed executed by Anup Das in the year 1976, erroneously the area was mentioned as 0.09 acre but he is in possession of 0.11 acre of the land since 1976. The present dispute is relating to only 0.02 acre of the land which does not appear in both the sale deeds executed in favour of the present appellant. The present appellant has not filed any suit for rectification of sale deed executed in the year 1976 or has tried to correct the area by filing suitable correction deed before registration authority. Both the parties have led their evidence before the trial court but they had not adduced any evidence to the effect that which part of khasra No. 1126/2 of the land was "land in dispute".

13. In the present case, the disputed land was not shown by metes and bounds. The land in dispute is not surrounded by the walls, no specification is shown by the parties to identify the land. In the absence of such identification, the learned

first appellate court has remitted the case for providing an opportunity of local inspection by appointing commissioner for identification of the land.

14. Though the appellate court should not remand the case in routine and remand of the case is an exception, not a general rule. The appellate court has required to decide the case on all issues and grounds raised by the parties. The case should be remanded to fill up the lacuna of the parties.

15. In the present case in the absence of any identification or demarcation of the land an effective decree in favour of any of the parties was not possible and after considering the aforesaid ground, the learned first appellate court has remanded the case for affording an opportunity of inspection by appointing commissioner to identify the land. In the aforesaid circumstances of the case, no option except to remand the case was left to the appellate court to cause substantial justice. The appellate court has not committed any illegality.

16. For the foregoing reason the appeal has no force, same is liable to be dismissed and it is hereby dismissed. Parties shall bear their own costs. Advocate fee as per schedule.