
(2003) 10 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1794 of 2002

Shri Deo Raghunathji Bada Mandir

APPELLANT

Vs

Prahlad Singh and Another

RESPONDENT

Date of Decision : 22-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23, Order 41 Rule 23A, Order 43 Rule 1(4), 9

Madhya Pradesh Land Revenue Code, 1959 — Section 257, 57(2)

Citation : (2004) 1 MPHT 97 : (2003) 4 MPLJ 27

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : K.N. Agrawal, for the Appellant; Alok Aradhe, for the Respondent

Final Decision : Allowed

Judgement

This is an appeal by the defendant No. 2 under Order 43 Rule 1 (u), CPC against order dated 4-9-2002 in Civil Appeal No. 109-A of 2002 of the IInd Additional District Judge, Camp Khurai, Sagar by which Civil Suit No. 81-A of 1992 has been remanded to the Trial Court.

Plaintiff Prahlad Singh filed the civil suit for declaration of title and permanent injunction in respect of the lands situated in Village Naupura, Tehsil Bina. According to the plaintiff he was granted Patta of these lands by the Sub-Divisional Officer and therefore, he became Bhumiswami of these lands. Subsequently these lands were recorded as "Charokhar" and these have been given in exchange by the defendant No. 1 State of M.P. to defendant No. 2 Deoraghnathji. In the written statement it was denied that the Patta of the lands was given by the Sub-Divisional Officer to the plaintiff. It is also stated that the alleged Patta is not valid. The Trial Court framed six issues and recorded findings on each issue. The Trial Court was of the view that the civil suit was not maintainable as per Section 57 (2) of the M.P. Land Revenue Code, 1959. Reliance was placed by the Trial Court on a Single Bench decision of this Court in

Hukum Singh and Another Vs. State of M.P., Therefore, the suit was dismissed.

The plaintiff filed the appeal against the judgment and decree of the Trial Court before the Second Additional District Judge, Sagar. In the impugned order dated 4-9-2002 the Appellate Court relying upon the Full Bench decision of this Court in State of M.P. and others Vs. Balveer Singh and others, has held that the civil suit filed before the Civil Court was maintainable. The Full Bench has held that the determination of question of Bhumiswami rights lies within the province of the Civil Court excepting the cases falling within the ambit of those specified u/s 257 of the M.P. Land Revenue Code, 1959.

The Appellate Court did not decide the appeal on merits and remanded the case to the Trial Court for a fresh decision.

It has been argued on behalf of the appellant that the Appellate Court could not have remanded the case either under Order 41 Rule 23 or Rule 23-A, CPC. It is submitted that the decision of the Trial Court was not only on the preliminary point but also on other issues and therefore, the Appellate Court could have decided the other points which arose in the appeal after appreciation of the documentary and oral evidence available in the record of the Trial Court. On the other hand it is submitted that the Trial Court primarily decided the question of jurisdiction of the Civil Court and findings on other issues are not clear and specific and remand of the case was necessary. It is also argued that the question of jurisdiction of the Civil Court has been wrongly decided by the Appellate Court.

So far as the question of jurisdiction of the Civil Court is concerned, the order of the Appellate Court is unassailable in view of the Full Bench decision of this Court referred above. The Civil Court had the jurisdiction to decide the suit filed by the plaintiff. But the remand of the case by the Appellate Court to the Trial Court is not justified. The judgment of the Trial Court shows that it has given findings on all the six issues after appreciation of the documentary and oral evidence. The question of jurisdiction of the Civil Court alone has not been decided but other issues also have been decided. It has been held on Issue No. 1 that the plaintiff does not have Bhumiswami right in the lands in dispute and on Issue No. 3 the finding is that the defendant No. 2 is Bhumiswami of these lands. These were two important issues in the civil suit. Therefore, the Appellate Court ought to have decided these points after independent appraisal of the documentary and oral evidence on record in light of the pleadings of both the sides. It is well settled that the power of remand should be exercised sparingly. Endeavour of the Appellate Court should be to dispose of the case itself. The power of remand should not be ordinarily exercised merely because in the view of the Appellate Court reasoning of the Trial Court in some aspects is wrong. Where all evidence has been duly placed before the Trial Court and it has decided the suit on merits on several issues which were framed, the Appellate Court has no power to remand. The order of remand retards the progress of the case and puts it in reverse gear. If the Appellate Court finds the findings of the Trial Court erroneous

or faulty it has the power to give its own findings. In the present case remand was not called for either under Rule 23 of 23-A or Order 41, CPC. The Appellate Court has not said that the re-trial is considered necessary.

It has been held by the Supreme Court in *Ashwinkumar K. Patel Vs. Upendra J. Patel and Others*, , that remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material is available before the Appellate Court it should decide the appeal one way or the other. It can consider the various aspects of the case mentioned in the order of the Trial Court and decide whether the view taken by the Trial Court on various issues ought to be confirmed or reverse or modified. It can consider the documents and other evidence.

In the result this appeal is allowed. The impugned order dated 4-9-2002 of the Appellate Court so far as it relates to the remand of the case to the Trial Court is set aside. The Appellate Court is directed to decide the appeal on merits after hearing both the sides. The parties are directed to appear before the Appellate Court on 8-12-2003.