



2026:CGHC:9205

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on 17-02-2026

Judgment delivered on 23-02-2026

MA No. 20 of 2026

1 - Hemant Kumar Sahu S/o Late Bholaram Sahu Aged About 38 Years
R/o Village Latabod, Harish Welding Shop, Main Road Latabod, Tahsil
And District Balod (C.G.)

2 - Harishchand Sahu S/o Late Bholaram Sahu Aged About 45 Years R/o
Village Latabod, Harish Welding Shop, Main Road Latabod, Tahsil And
District Balod (C.G.)

3 - Gayatri Sahu D/o Late Bholaram Sahu Aged About 42 Years R/o
Village Latabod, Harish Welding Shop, Main Road Latabod, Tahsil And
District Balod (C.G.)

4 - Purushottam Sahu S/o Late Bholaram Sahu Aged About 52 Years R/o
Bargaon, Tahsil Dongargaon, District Rajnandgaon (C.G.)

5 - Krishna Bai Wd/o Late Bholaram Sahu Aged About 70 Years R/o
Bargaon, Tahsil Dongargaon, District Rajnandgaon (C.G.)

... Appellants

versus

1 - Ashwani Kumar S/o Late Taran Das Sahu Aged About 60 Years R/o
Village Bohardeeh, Tashil Patan, District Durg (C.G.)

2 - Devraj Sahu S/o Vishnu Sahu Aged About 30 Years (Wrongly Mentioned As Late Taran Das Sahu), R/o Nehru Nagar Utai, Tahsil And District Durg (C.G.)

3 - State Of Chhattisgarh Through The District Magistrate, District Durg (C.G.)

..Respondents

For Appellants	:Mr. Praveen Dhurandhar, Advocate
For Respondent No.1	:Mr. Alok Bakshi, Advocate
For Respondent No.2	:Ms. Mitisha Kotecha, Advocate
For Respondent/State	:Mr. Anand Gupta, Dy. G.A.

Hon'ble Shri Bibhu Datta Guru, J

C A V Judgment

1. By the present appeal under Order 43 Rule 1(u) of the Code of Civil Procedure, 1908 (for brevity 'the CPC'), the appellants/plaintiffs challenging the impugned judgment and decree dated 18/11/2025 passed by the learned District Judge, Patan, District Durg C.G. in New Civil Appeal No.190-A/2024 (Old Appeal No.94-A/2023) (Ashwani Kumar & Anr Vs. Hemant Kumar Sahu & Ors), whereby the judgment and decree passed by the learned Civil Judge, Class-I, Patan, District Durg, C.G. in Civil Suit No.08A/2021 dated 14/08/2023 (Hemant Kumar Sahu & Ors Vs. Aswani Kumar & Ors) has been set-aside and the matter has been remanded to the trial Court for fresh adjudication.

2. For the sake of convenience, the parties would be referred as per their status before the learned trial Court.
3. The plaintiffs preferred a suit seeking a declaration, permanent injunction and partition, pleading *inter alia* that defendant No.1 Ashwani Kumar and Bholaram (father of plaintiffs No. 1 to 4 and husband of Plaintiff No. 5) were real brothers. Bholaram passed away in the year 2012. In the name of late Bholaram, agricultural lands situated at Village Bohardih, Patwari Halka No. 19, Revenue Circle Bhilai, Tehsil Patan, District Durg, bearing Khasra Nos. 119/2, 119/3, 154, 155/1, 155/2, 155/3, 289/1, 289/2, 289/3, 290/1, 290/2, 290/3, 386, 424, having areas respectively 0.240, 0.360, 2.550, 1.350, 0.330, 0.160, 0.230, 0.320, 0.280, 0.280, 0.210, 0.350, 0.030, 0.450 hectares, totaling 14 khasras and total area 7.940 hectares, and Khasra Nos. 522, 32, 396/1, 513, 386 having areas respectively 0.13, 3.21, 0.69, 2.24, 0.03 hectares totaling 6.30 hectares, were recorded in his name as landowner in the year 1994–95. During his lifetime, late Bholaram had filed a civil suit disputing that defendant No. 1, Ashwani Kumar, was not his real brother; however, the said suit was dismissed on 02.04.2005. Defendant No.1 had also submitted an application before the Tehsildar for recording possession, pursuant to which an order dated 16.05.2001 was passed directing that possession of the

disputed land be recorded in the name of Defendant No.1. Thus, the plaintiffs and Defendant No. 1 became joint landowners of the disputed property. Late Bholaram had also filed a claim seeking declaration that the sale of land bearing Khasra No. 32, area 3.21 hectares, executed in favor of Janaki Bai, be declared null and void and not binding upon Ashwani Kumar, and accordingly, he was declared co-owner in respect of the said disputed land. Similarly, late Bholaram had sold lands bearing Khasra Nos. 255, 31, 396/1, 513, and 386. By judgment and decree dated 31.08.2017, Defendant No.1 was declared co-owner in respect of the said lands. Therefore, the disputed land is joint family property of the plaintiffs and defendants, and no partition has taken place till date. However, Defendant No.1, without effecting any partition in favor of the legal heirs of late Bholaram, colluded with the Patwari and got his name recorded in the revenue records. Out of the disputed lands, defendant No. 1 has sold Khasra Nos. 154 and 154/1. Hence, the plaintiffs claim that they are the sole title holders and persons in possession to the extent of their share in the suit property, and that they are entitled to 1/2 share in the aforesaid lands.

4. In the said Civil Suit, the defendants No.1 and 2 submitted their written statement and denied the plaint averments. They submitted

that Bholaram, had ousted Ashwani Kumar from the house and, on 08.01.1984, got him declared dead and thereafter got his own name recorded over the entire agricultural land situated at Village Bohardih. Thereafter, the Court declared Ashwani Kumar as co-owner of the entire suit property. On the basis of the said judgment and decree, Ashwani Kumar filed an application before the Tehsildar in the year 2005–06 seeking partition, and accordingly, the said land was partitioned. Similarly, by judgment dated 31.08.2017, Ashwani Kumar was declared co-owner in respect of Khasra Nos. 522, 32, 396/1, 513, and 386, and the sale deed dated 15.02.2002 was declared illegal and void. Therefore, the suit property is not the joint property of the plaintiffs. The said property has been declared to be the lawful property of the defendant based on the judgment passed by the civil Court. It is further submitted that the lands sold to defendant No. 2 were agricultural lands lawfully owned and possessed by defendant No. 1 Ashwani Kumar, and that the sale deeds executed on 20.03.2013 and 12.03.2018 are valid; hence, they cannot be declared void. The plaintiffs are not entitled to a 1/2 share or any right in the suit property; therefore, no partition of the joint account can be effected. The plaintiffs are not in cultivating possession of the said

land; therefore, they have no right to seek declaration of title over the agricultural land.

5. The learned Trial Court, after framing the issues and upon due consideration of the evidence adduced by both the parties as well as the material available on record, allowed the suit filed by the plaintiffs holding that the evidence produced by the plaintiffs and Defendant No. 1 clearly establishes that the disputed land is ancestral property belonging to both the plaintiffs and Defendant No.1. This makes it evident that Bholaram, brother of defendant No.1 had a rightful share in the ancestral property, and after his death, his legal heirs, who are the plaintiffs in the present case, are entitled to his share and rights. No evidence has been produced by either party in the case to show that the disputed land had been previously partitioned. Therefore, based on the evidence available on record, the plaintiffs' ownership over the disputed land is proved, and they are found entitled to a 1/2 (one-half) share in the said property. The trial Court further held that the plaintiffs are entitled to a 1/2 (one-half) share in the disputed land. In such circumstances, the sale executed by Defendant No. 1 in favor of Defendant No. 2 on 14.06.2013, in respect of a portion of Khasra No. 154 measuring 2.01 hectares and a portion of Khasra No. 154/1 measuring 0.45 hectares, which has been exhibited in the

case as Exhibits P-30 and P-31, was made without the consent of the plaintiffs. Therefore, the said sale deed is liable to be declared illegal and void. Further, once the plaintiffs' share in the suit property stands proved, it becomes necessary to restrain defendant No. 1 from making any further sale or transfer of the disputed property. Accordingly, there are sufficient grounds to grant a decree of permanent injunction in favor of the plaintiffs.

6. Aggrieved by the said judgment and decree, the defendants preferred a Civil Appeal before the learned first Appellate Court and also filed an application under Order XLI Rule 27 of the CPC. The learned Appellate Court allowed the said application and thereafter without adjudicating the appeal on its merits, set aside the judgment and decree dated 14.08.2023 passed by the learned Trial Court and remanded the matter to the Trial Court with a direction to restore the suit to its original number and to implead the legal heirs of Laxmi Bai, namely; Sumitra Bai & Kamla Bai, as necessary parties to the proceedings in accordance with law. The Court was further directed to afford a proper opportunity of hearing to both parties, particularly in relation to the certified copies of documents filed by the defendants by an application under Order XLI Rule 27 of the CPC in the appeal, and thereafter

to decide the matter afresh on its merits in accordance with law. Thus, this appeal by the appellants/plaintiffs.

7. Learned counsel for the appellants/plaintiffs would submit that the learned Appellate Court has not acted properly while allowing the application filed under Order XLI Rule 27 of the CPC that too without appreciating that there were no pleadings in the written statement of the defendants in respect of the documents/evidence sought to be produced at the appellate stage. Learned counsel further submitted that before invoking its powers under Order XLI Rule 23A of the CPC, the learned Appellate Court failed to satisfy itself that a retrial was necessary. The issues duly framed and decided by the learned Trial Court were neither properly dealt with nor reversed on merits by the learned Appellate Court. Instead, the matter was remanded in a summary and mechanical manner, which has caused serious prejudice to the plaintiffs. Learned appellate Court failed to appreciate the documentary and clinching evidence adduced by the plaintiffs and passed the impugned judgment without going into the merits of the case. In support of his contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of **Municipal Corporation, Hyderabad Vs. Sunder Singh** reported in (2008) 8

SCC 485 and Sirajudheen Vs. Zeenath & Ors reported in (2024) 17 SCC 250.

8. (A) On the other hand, learned counsel for the respondent/defendant submits that upon perusal of the order of the Appellate Court, will make it clear that the appellate Court after examining the entire documents has taken an appropriate decision to take those documents on record as additional evidence. Learned counsel submits that as regards the challenge to the order allowing the application under Order XLI Rule 27 of the CPC, it is submitted that the principal grievance of the plaintiffs appears to be that, upon allowing the said application, the learned First Appellate Court ought to have itself recorded the additional evidence and decided the matter finally. In this connection, it is submitted that once an application under Order XLI Rule 27 of the CPC is allowed, Order XLI Rule 28 thereof vests discretion in the First Appellate Court either to take such evidence itself or to direct the subordinate court to take the evidence and return the same. The choice between these two courses is entirely within the judicial discretion of the Appellate Court. Accordingly, the course adopted by the learned First Appellate Court cannot be said to be illegal or erroneous merely on the ground that it chose to remit the matter instead of recording the evidence itself. In support of his

contention, he placed reliance upon the decision rendered by the Supreme Court in the matter of **J. Balaji Singh Vs. Diwakar Cole & Ors** reported in **2017 (14) SCC 207**.

(B) Learned counsel would further submit that the learned 1st Appellate Court has rightly held that the plaint in question was suffering from non-joinder of party as the plaintiff has failed to implead Sumitra and Kamla as necessary party. Once there is a direction to implead Sumitra and Kamla, the First Appellate Court rightly remanded the suit for fresh decision after impleadment of Sumitra and Kamla.

9. I have heard learned counsel for the parties, perused the material available on record.
10. By the impugned judgment, the learned First Appellate Court allowed the application under Order XLI Rule 27 of the CPC and remanded the matter to the learned Trial Court with a direction to hear the matter afresh after impleading legal representatives of Laxmi Bai and after affording due opportunity of hearing to all the parties on the certified copies of documents filed by the defendant.
11. In the application under Order XLI Rule 27 of the CPC, the defendant has stated that he is a farmer and was not well educated. It is also stated he was not advised by the previous counsel to

produce the documents before the learned trial Court. According to the defendant, he was under the belief that the matter relating to the application under Order XLI Rule 27 of the CPC, the defendant has stated that he is a farmer and was not well educated. It is also stated he was not advised by the previous counsel to produce the documents before the learned trial Court. According to the defendant, he was under the belief that the matter relating to the disputed land was pending before the High Court, and therefore the information could not be provided to the trial Court.

12. As far as non-joinder of necessary parties is concerned, the defendant has stated that the plaintiffs instituted a suit against the defendant stating that the suit property is joint family property, and sought declaration of their title over 1/2 share in the suit land, partition, and permanent injunction. Defendant Ashwani Kumar Sahu, submitted an affidavit under Order 18 Rule 4 of the CPC stating therein that Sumitra, Kamla, Bholaram (father of plaintiffs No.1 to 4 and husband of plaintiff No.5), and Ashwani (defendant No.1) are the children of Laxmi Bai, who is the daughter of Paiserneen Bai. Though the legal heirs of deceased Bholaram were shown as the plaintiffs, however, sisters of Bholaram and Ashwani Kumar namely; Sumitra and Kamla have not been impleaded as necessary parties in the suit.

13. In order to effectively adjudicate upon all the questions involved in the dispute, necessary parties would be added. In the present case as well, the learned Trial Court did not properly frame an issue regarding non-joinder of necessary parties, and without affording an opportunity of hearing to such necessary parties, decreed the suit, which is not in accordance with law.
14. The first and foremost reason for remand of the case by the learned first appellate Court was that the necessary parties in the suit were not joined in the suit. At this juncture, it would be apt to quote Section 99 of the CPC for ready reference, which reads thus :

99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction: No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder [or non-joinder] of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court:

[Provided that nothing in this section shall apply to non-joinder of a necessary party.]

15. Bare perusal of the aforesaid provision, it is crystal clear that proviso to Section 99 of the CPC would squarely applicable to the facts of the present case as it is a matter of non-joinder of necessary parties namely; Kamla Bai & Sumitra Bai, who are the legal heirs of Laxmi Bai.

16. As far as remanding the case after allowing the application under Order XLI Rule 27 of the CPC is concerned, under this provision after allowing the application either the appellate court on its own can take evidence or remand the matter back to the trial court for its fresh adjudication. In the present case when the first appellate court was remanding the case on account of non-joinder of necessary parties and it thought fit that the case be remanded back to the trial court for taking evidence on the documents which have been allowed through application under Order XLI Rule 27 of the C.P.C. Thus, is manifest that there is no apparent error on the part of the learned first appellate Court.
17. It is the trite law that once the appellate Court decides to remand the matter, it is not required for it to adjudicate on merits involved in dispute. In fact, discussion and finding on issues involved in matter, after the appellate Court coming to conclusion that the matter needed to be remanded, is uncalled for.
18. The Supreme Court in the matter of **J. Balaji Singh** (supra) held thus at paras 15 & 16 :

“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 XLI Rule 27 of the 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 the entire evidence. The first appellate court was, therefore, justified in taking recourse to powers conferred on the appellate court under Order XLI Rule 23A for remanding the case to the trial court. We find no fault in exercise of such power by the first appellate court.

16.....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 a less record findings on several issues on merits. It was totally uncalled for.”

19. In the present matter, while remanding the matter the learned first appellate Court has not expressed its opinion on the merits of the matter. It is necessary to mention here that the documents which were filed along with the application under Order XLI Rule 27 of the CPC appear to be certified copies of the judgments of the Civil Court passed earlier and the order sheets of some of the pending litigation and appeals. The learned first appellate Court after considering all the aspects of the matter has rightly allowed the application under Order XLI Rule 27 of the CPC.
20. By placing reliance upon the case laws rendered by the Supreme Court in the matters of **Sunder Singh** (supra) and **Sirajudheen** (supra), the plaintiffs would submit that the reversal judgment and remand under Rule 23 of the Order XLI of the CPC has to be

based on cogent reasons and for that matter, advertent to and dealing with the reasons. In the present case, the learned First Appellate Court while dealing with the appeal, assigned the sufficient reasons why the remand is necessary and by observing that the suit was suffering from non-joinder parties and at the same time allowed the application under Order XLI Rule 27 of CPC by allowing some documents which are certified copies of the earlier proceedings between the parties. Thus, it cannot be said that the reversal judgment as well as the remand for fresh trial has been passed without assigning sufficient and cogent reasons. Under these circumstances, the plaintiffs cannot get any advantage on the basis of the aforesaid decision.

21. In view of the foregoing discussion, it is held that the appellate Court has rightly remanded the matter to the trial Court, which does not call for any interference. Accordingly, the second appeal is **dismissed**, and the judgment impugned passed by the appellate Court is hereby affirmed.

SD/-
(Bibhu Datta Guru)
Judge

Gowri/
Amardeep

Headnote

Once the First Appellate Court formed an opinion to remand the case to the trial Court by assigning cogent reasons, there was no need to record findings on several issues on merits.

एक बार जब प्रथम अपीलिय न्यायालय ने ठोस कारण बताकर केस को ट्रायल कोर्ट में वापस भेजने की राय बना ली, तो मेरिट के आधार पर कई मुद्दों पर नतीजे रिकॉर्ड करने की कोई ज़रूरत नहीं थी।