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MA-2990-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

MISC. APPEAL No. 2990 of 2025

*SHRI BUILDERES DHAR THROUGH SMT. KUSUMLATA AND
OTHERS*

Versus

SMT. PEMIBAI AND OTHERS

.....
Appearance:

*Shri V.K. Jain, learned Senior Advocate assisted by Shri Arpan Jain and
Sahket Yadav, learned counsel for the appellants.*

*Shri Ajay Bagadia, learned Senior Advocate assisted by Shri Piyush
Dubey, learned counsel appeared for the caveator.*

*Shri Anand Bhatt, learned Government Advocate for respondent No.6 /
State.*

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ORDER

Reserved on : 15.09.2025

Pronounced on : 14.10.2025

The present appeal has been filed against the judgment and decree dated 27.02.2025, passed in Regular Civil Appeal No.39/2023, whereby the first appeal filed by respondent No.1 was allowed and the matter was remanded back to the learned trial Court.

1.1. The judgment and decree was passed by the trial Court on 03.01.2023, thereafter, the original plaintiff died on 26.03.2023, hence her legal representative / son Gorelal filed First Appeal before the appellate Court on 09.05.2023 along with affidavits of other legal heirs for expressing no objection on filing appeal by Gorelal.



2. The relevant facts of the case are that respondent No.1 filed a suit for declaration and permanent injunction for the following reliefs :

"(अ) यह घोषित किया जावे कि दाविया भूमि वादिया के मालकी, कब्जे की, ग्राम-जैतपुरा, तहसील व जिला धार की, पड़त- कृषि भूमि, सर्वे नंबर 81/2 (इक्यासी बटे दो) रकबा 1.834 हे. (एक पाईट आठ सौ चौतीस हे.), लगान 5.52 रु. (पांच रुपये बावन पैसे) पर प्रतिवादीगण ने, अपना-नामांतरण रेवेन्यू कर्मचारी एवं अधिकारियों से मिलकर-जुलकर तथा अवैध रूप से, बिना, किसी अधिकार से, सांठ गांठ, छलछिद्र कपट करके करवा लिया है, वह वादिया पर बंधनकारक नहीं होकर, इससे, उन्हें कोई भूमिस्वामी के अधिकार प्राप्त नहीं हो जाते हैं और वादिया के मुकाबले में शून्य और व्यर्थ होकर निरस्त किये जावे।

(ब) यह कि, वादिया के पक्ष में प्रतिवादीगण के विरुद्ध, इस-आशय की। स्थायी निषेधाज्ञा प्रचलित की जावे कि, प्रतिवादीगण दाविया-भूमि, को, कृषि-भिन्न प्रयोजन- हेतु परिवर्तित नहीं करावें और उस पर कॉलोनी का विकास नहीं करें एवं न ही किसी को अंतरित, भारित करें तथा वादिया के कब्जे में, अवैध, हस्तक्षेप नहीं करे, न तो, ऐसा, प्रतिवादीगण स्वयं ऐसा करें, और न ही अन्यो से करावें।

(स) यह कि दावे का खर्चा दिलाया जावे

(द) इसके अतिरिक्त, अन्य कोई सहायता जो, न्यायालय, न्याय तथा साम्य के आधार पर कानूनन, दिलवाना, उचित समझे, वह भी दिलाई जावें।"

3. The original plaintiff / respondent No.1 stated in her plaint that she was the owner and in possession of agricultural land bearing Survey No.81/2 admeasuring 1.834 hectares situated in Village Jaitpura, Tehsil and District Dhar.

4. She further pleaded that she is a widow and an elderly person. Her son had gone to Gujarat for business around 8 to 10 years ago, due to which she lived alone in Dhar. Later, she also went to Gujarat and her other son, who held her power of attorney was taking care of her agricultural land in her absence.

5. It was also pleaded that the defendants / appellants, taking advantage of her absence, in connivance with revenue officials, got their names mutated in the revenue records in respect of the land of the plaintiff. However, she continued to remain in possession of the suit property.



6. She further pleaded in the plaint that, as soon as she became aware of the defendants' attempts to encroach upon her land, she published a notice in the Nai Duniya daily newspaper (edition dated 21.11.2012), asserting her ownership over the said land.

7. She also submitted that the defendants were illegally attempting to alter the revenue entries of the suit property and were trying to develop a colony on the said land. However, she had never alienated or transferred the suit property to anyone.

8. She stated that upon learning the defendants' illegal activities, she along with her son, who is her power of attorney holder came to Dhar on 08.10.2012 and obtained certified copies of the Khasra and other relevant records on 10.10.2012. Thereafter, she published the public notice in the newspaper.

9. As the defendants continued with their illegal actions, she was constrained to file the present suit.

10. The defendants / appellants filed their written statement and in the first para, denied that the possession of the plaintiff / respondent No.1 on the suit property. Her title over the land was also denied. It was further denied that she had gone to Gujarat; rather it was asserted that she continued to reside in Dhar.

11. In para 2 of the written statement, it was pleaded that the plaintiff is not in possession of the suit property for many years. Instead, the defendants / appellants claimed that the plaintiff had executed two registered sale deeds in respect of the suit property, one in favour of Rishi Kumar, S/o



Bhogiramji for 0.770 hectares on 19.02.1997 and another in favour of Sajid Khan and Mohd. Farukh Kureshi for 1.064 hectares on the same date.

12. Following the execution of these sale deeds, the names of the purchasers were duly mutated in the revenue records and they took possession of their respective portions of the suit property. Thereafter, on 19.03.1998, Rishi Kumar, Sajid Khan and Mohd. Farukh Kureshi executed sale deeds in favour of the defendant No.1 / appellant.

13. Since 1998, defendant No.1 / appellant has been in continuous possession of the suit property and his name has been mutated in the relevant revenue records. A boundary wall has also been constructed around the suit land.

14. Thus, all the claims and pleadings made by the plaintiff / respondent No.1 were specifically denied by the appellants. They not only asserted that their name had been mutated in the revenue records but also categorically denied the plaintiff's possession and title over the suit property.

15. The learned trial Court, based on the respective pleadings of the parties, framed as many as six issues. However, no issues were framed regarding the title and possession of the suit property.

16. Issue No.1 pertains to the mutation carried out by the defendants / appellants.

16.1 Issue No. 2 relates to the effect of the mutation on the plaintiff in respect of the land bearing Survey No. 81/2, admeasuring 1.834 hectares.

16.2 Issue No.3 was whether the defendants / appellants were attempting to interfere with the possession of the plaintiff / respondent No.1.



17. Despite the absence of issues with respect to possession and tile, the trial Court proceeded to decide the question of title and possession. It held that the plaintiff / respondent No.1 is not the title holder of the suit property and further made a passing remark that she is also not in possession of the suit property.

18. The trial Court, after recording evidence, decided all the issues against the plaintiff / respondent No.1. Accordingly, the suit was dismissed by judgment and decree dated 03.01.2023.

19. Respondent No.1, filed Regular Civil Appeal No.39/2023 against the said judgment and decree. The same was considered by the First Appellate Court on the following questions of law :

"(1) क्या विद्वान विचारण न्यायालय ने वादग्रस्त भूमि पर अपीलार्थी कमांक 1 का स्वामित्व व आधिपत्य प्रमाणित न होना मानकर त्रुटि कारित की है?

(2) क्या विद्वान विचारण न्यायालय द्वारा पारित निर्णय एवं आज्ञासि दिनांक 31-01-2023 अपील में हस्तक्षेप योग्य है, यदि हाँ तो किस सीमा तक?"

20. The learned First Appellate Court, after considering the evidence on record, concluded that the learned trial Court had failed to frame issues essential for the proper adjudication of the case. Accordingly, the matter was remanded to the learned trial Court, with two issues framed by the Appellate Court, as set out in para 18 of the order dated 27.02.2025.

20.1 As such, the appeal was disposed of and the matter was remanded back to the learned trial Court for fresh consideration by impugned order dated 27.02.2025.

21. Learned senior counsel for the appellants while criticising the impugned order, refers to para 7 of the judgement of the trial Court and



points out that it was expressly admitted by the witness Gorelal (PW-2), who is the son of Pemibai, the plaintiff, that none of the sale deeds executed with respect to the suit property have been challenged in the suit.

21.1 He further refers to paras 8 to 12 and 15 to 17 of the impugned award and submits that although the trial Court did not frame any issue with respect to the title of the suit property or possession, it has clearly recorded findings on these issues.

21.2 He submits that the trial Court, after considering the evidence on record, concluded in para 17 that it was not found that the sale deed marked as Exh. P-5 was forged. In other words, the execution of Exh. P-5 was found to be proper.

21.3 He also refers to the findings recorded by the trial Court in para 20 of the judgement and submits that even the possession of the plaintiff was not established with respect to the suit property.

21.4 As such, he submits that there was sufficient evidence available on record for the adjudication of the issues of title and possession even before the first appellate Court. However, the Court has completely ignored this and has remanded the matter back to the trial Court.

21.5 Learned senior counsel then refers to para 3 of the judgement of the first appellate Court and submits that the suit was filed against the mutation of the suit property in the names of the appellants / defendants No.1 to 3. As such, question No.1, as framed by the appellate Court in para 18 of the impugned judgement, is neither correct nor proper, as there was no issue involved regarding the title of the suit property. Hence, the said issue could



not have been framed by the learned first appellate Court.

21.6 Learned senior counsel for the appellants further submits that, even otherwise, the first appellate Court in para 16 of the appellate judgement has recorded that the suit was based on the title and possession of the plaintiff / respondent No.1 and that the revenue entries were challenged based on such pleadings of title and possession. Therefore, it was necessary for the trial Court to decide the issue of title and possession as such remanded the matter.

21.7 He submits that, while recording such findings in para 16, the first appellate Court has remained, completely oblivious of the fact that both issues i.e. title and possession have already been decided by the trial Court, as demonstrated by paras 15 to 20 of the judgement of the trial Court.

21.8 He also submits that, after reproducing the provisions of Order 41 Rule 25 of CPC in para 17, the first appellate Court framed two issues in para 18 with respect to the title of the plaintiff and her possession on the suit property and consequently, remanded the entire suit for re-trial.

21.9 He submits even if the first appellate Court was of the view that certain issues needed to be framed and evidence was required to be recorded on those issues before findings could be made, then the remand should have been limited only to that extent by framing those specific issues rather than ordering a wholesale remand of the entire suit. As such, on this ground as well, the impugned judgement of the first appellate Court is not sustainable.

21.10 He also points out that in the appeal memorandum, no ground for remand was raised by respondent No.1. Hence, in any case, the remand



could not have been made.

21.11 Learned senior counsel then refers to the provisions of Order 14 Rule 1 of the CPC and submits that, in view of the clear provisions of Order 41 Rule 1 of the CPC, the trial Court had correctly framed the issues in the suit. He submits that, as per the said provision, the trial Court was required to frame issues that arise on a material proposition of fact or law, which is affirmed by one party and denied by the other.

21.12 He thus submits that, since the question raised by the plaintiff was limited to the mutation of the name of defendants in revenue record, the questions with respect to title and possession could not have been framed by the trial Court.

21.13 He reiterates that, even otherwise, the issues of possession and title had already been decided and therefore, there was no necessity to remand the matter back to the trial Court.

21.14. Learned senior counsel, in support of his submissions, places reliance on judgements of the Hon'ble Apex Court as well as this Court, rendered in following cases :

(i) *Bhairab Chandra Nandan vs. Randhir Chandra Dutta* in (1988) 1 SCC 383,

(ii) *Sri Gangai Vinayagar Temple vs. Meenakshi Ammal and Other* in (2015) 3 SCC 624,

(iii) *Municipal Corporation, Hyderabad vs. Sunder Singh* in (2008) 8 SCC 485,

(iv) *Manju Bai vs. Dashrath and Others* in 2022 (2) MPLJ 701,



- (v) *Shivdayal vs. Meenabai and Others* in 2014 (4) MPLJ 610,
(vi) *Murari Lal vs. Ram Kumar Ojha* in 2015 (1) MPLJ 243,
(vii) *Syed Rahimunnisa vs. Malan Bi (Dead) by Legal Representatives and Another* in (2016) 10 SCC 315, and
(viii) *Harcharan (Deleted) Through LRs (1) Narendra Singh and Others vs. The State of Madhya Pradesh and Others* in M.A. No.110/2015.

21.15 Accordingly, he prays for setting aside the impugned order.

22. *Per contra*, learned senior counsel for the plaintiff / respondent No.1 straight away refers to the pleadings in the plaint and the written statement. He points out para 1 of the plaint, in which it was averred by the plaintiff / respondent No.1 that she is the owner and in possession of the suit property.

22.1 He then refers to para 1 of the written statement, wherein the defendants, in reply to para 1 of the plaint, denied the claim of the plaintiff. The possession and title of the plaintiff were specifically denied.

22.2 He further refers to para 3 of the plaint, in which the plaintiff asserted that she is still in possession of the suit property. In rebuttal, he points out para 3 of the written statement, where the defendants again denied the possession of the plaintiff.

22.3 After referring to the pleadings in the plaint and the written statement, learned senior counsel refers to the provisions of Order 14 Rule 1 of the CPC and submits that the provision clearly states that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other.



22.4 He further submits that material propositions are explained in Rule 2 of Order 41 of the CPC which provides that material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or which a defendant must allege in order to constitute his defence.

22.5 Thus, he submits that both the issues, i.e. title and possession, were asserted by the plaintiff to demonstrate the illegality of the revenue entries made in the names of the defendants and were denied by the defendants to justify the validity of those very revenue entries. As such, both were issues of fact which ought to have been framed by the trial court during the trial of the suit.

22.6 He further submits that the contention of the counsel for the appellants namely that even in the absence of framing of issues relating to title and possession, evidence was recorded and findings were rendered is contrary to the settled proposition of law as well as contrary to the facts on record.

22.7 He submits that, in absence of issues framed with respect to title and possession, it could not have been expected that either the plaintiff or the defendant would lead evidence on these aspects. He, therefore, submits that the very fact that the trial Court decided the questions of title and possession without framing relevant issues warrants a remand of the matter to the trial Court, as it has clearly caused prejudice to the case of the plaintiff / respondent No.1. As there was no specific issue framed on either title or possession thus, the trial Court ought not to have recorded findings on these



aspects.

22.8 Learned senior counsel then refers to paras 16 to 23 of the judgement of the first appellate Court. He submits that the first appellate court specifically considered this aspect and recorded in para 16 that no issues were framed regarding the title and possession of the plaintiff. He points out that the first appellate Court noted a declaratory decree along with a permanent injunction and an injunction against interference with possession had been sought. In such circumstances, issues relating to title and possession were essential as a declaratory decrease could not have been passed without adjudicating these issues, so also even for the grant of permanent injunction.

22.9 He thus submits that the first appellate Court duly considered this issue and before remanding the case, dealt with the findings of the trial Court. He further refers to para 22 of the judgement of the appellate Court, pointing out that the Court recorded its dissatisfaction regarding the findings of the trial Court and identified the error in not framing the two essential issues.

22.30 Finally, he refers to para 23 of the judgement and states that the appellate Court set aside the judgment and decree of the trial Court before remanding the matter back for recording of evidence on the issues framed in para 18 of the impugned judgement.

22.31 Learned senior counsel then refers to the provisions of Order 41 Rule 25 CPC and submits that it is not merely a question of material issue; rather, the appellate Court has the power to frame or try any issue necessary



to determine a question of fact essential to the proper adjudication of the suit. Accordingly, the first appellate Court found that a decision on the questions of title and possession was essential for a proper determination of the suit on merits. Therefore, the remand was justified.

22.32 Learned Senior counsel further refers to para 20 of the judgement of the trial Court and submits that the appellants have wrongly contended that the issue of possession was decided. A close scrutiny of para 20 reveals that the finding primarily relates to the validity of the mutation and any reference to possession was merely incidental, a passing remark rather than a deliberate and detailed consideration on the issue. In fact, since no specific issue was framed on the questions of title and possession, the plaintiff did not lead any evidence in that regard. Nevertheless, the trial Court proceeded to record findings on these aspects, which has caused prejudice to the plaintiff / respondent No.1.

22.33 He lastly submits that, by remanding the matter to the trial Court, no prejudice is caused to the appellants / defendants, as they have the opportunity to lead evidence in support of their claim, including title and possession.

23. In rejoinder, learned senior counsel for the appellants submits that Pemibai, i.e., the plaintiff, had already sold the land to three persons through two separate sale deeds. Those three purchasers, in turn, sold the suit property to the present appellants. Therefore, the plaintiff/respondent No.1 neither has any claim nor is in possession of the suit property.

23.1 He also submits that the issue is not merely about setting aside the



judgement and degree of the trial Court, but about the reversal of its findings. He further submits that the first appellate Court, while remanding the matter, did not reverse the findings of the trial Court. Hence, he submit, the judgement of the appellate Court is not sustainable.

24. Heard learned counsel for the respective parties and perused the record.

25. The suit was filed by the plaintiff / respondent No.1 for declaration to the effect that the entries made in the revenue record with regard to agricultural land situated in Survey No.81/2 admeasuring 1.834 hectare of Village Jethpura, Tehsil and District Dhar are *void* and be cancelled as well as permanently injuncting defendants / present appellants from changing usage of the suit property and for restraining from development of colony and also not to alienate the suit property and not to interfere in the possession of the plaintiff.

26. The anchor of argument of learned Senior Counsel has remained all along on the issue that the question of title as well as possession has sufficiently been tried and decided by the trial Court. As such the remand was completely unwarranted and unsustainable. As such the pivotal point to be considered in the present appeal is, whether the issue of title and possession was tried by the trial Court and decided appropriately so as not to require remand. In view of the above premise, consideration of respective pleadings of the parties gain significance.

27. The respondent No.1 / plaintiff averred in first paragraph of her plaint that the suit land is of her title and possession. She continues in the



same vein in para 3 of the plaint that her possession is being continued till date (i.e. on the date of filing of the suit). It is thus clear that both, the title as well as possession, were asserted by the plaintiffs in her plaint.

28. In view of the pleadings in the plaint regarding title and possession, let us see the reply given by the appellants / defendants in their written statement. Para 1 of the written statement would say that the pleading of para 1 of the plaint is denied. It is denied that the suit property is of title and possession of the plaintiff. Clearly both the the possession as well as title has been denied. Not only this, the written statement goes one step ahead and states in response to pleading in para 3 and 4 of the plaint that the property was sold by the plaintiffs by executing two registered sale deeds on 19.02.1997 in favour of Rishi Kumar S/o Bhogiram for an area of 0.770 hectare and Sajid Khan S/o Shahjma Khan and Mohd. Farukh Qureshi S/o Fakruddin Qureshi for an area of 1.064 hectare. It went on to asset that both the owners subsequently executed sale deeds in favour of appellant / defendant No.1 on 19.03.1998. As such it is clear that the question of title was an issue. It is also clear that the question of possession was equally an issue.

29. The mandate of law in terms of Order XIV Rule 1 of CPC provides that issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Rule 2 of the same order provides that what will constitute material propositions. It explains that those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence are



the material propositions. Rule 3 goes on to explain that each material proposition affirmed by one party and denied by the other shall form the subject of distinct issue.

30. Now in the present case, it has to be considered that what is the preposition of fact, which the plaintiffs in the present case has alleged in order to show a right to sue and seek declaration with respect to revenue entries caused by the defendants. The material preposition in the present case is title and possession of the plaintiff, which she asserts by stating that she is the title holder and in possession of the suit property. She explains in para 6 and 7 of her plaint that she has not transferred the suit property in any manner to any one and also that the appellants / defendants were trying to create revenue entries in connivance with revenue officers. Clearly it's a material proposition of fact.

31. Now the respondent have also in turn asserted their material proposition by stating in reply to paras 3 and 4 that in fact the plaintiff had executed two sale deeds on 19.02.1997 and those purchasers have also executed sale deeds on 19.03.1998 in favour of defendant No.1. This is a material proposition by the defendants. As such it is clear that in terms of Order XIV Rule 1 both the questions were required to be considered and issues of facts were required to be framed on both the questions, which clearly has not been done by the trial Court.

32. A perusal of the judgment of the trial Court would show that in fact as many as six questions of facts were framed, out of which questions No.4, 5 and 6 (wrongly mentioned as '3') were with respect to valuation,



court fees, limitation and relief / costs. Thus, the real issues of fact was question No.1, which was with respect to causation of revenue entries with respect to the suit property in connivance with the revenue officers. Question No.2 was the effect of revenue entry, whether they are binding on the plaintiff and third whether the defendants were interfering in the possession of the plaintiff. Again these would not cover the question of title and the issue of possession.

33. Irrespective of the fact, whether the issues were framed or not, the Court should decide the same by recording evidence on the question of title and possession. If this is considered then also a close scrutiny of the entire judgment and decree of the trial Court would show that there is a one line reference in para 20 about the possession and nothing else. Para 20 decide the question of validity of revenue entries and holds "अतः यह प्रमाणित पाया जाता है कि वादी द्वारा राजस्व अभिलेखों में जो नाम चढ़ाया गया है वह वादी पर बंधनकारी है; चूंकि, वादग्रस्त भूमि पर वादी का आधिपत्य नहीं पाया गया है इसलिए यह प्रमाणित नहीं पाया जाता है कि प्रतिवादीगण वादित भूमि पर वादी के आधिपत्य पर हस्तक्षेप करने का प्रयास कर रहे हैं ". This is the finding in respect of possession. In fact it is a conclusion based on no discussion. In the entire judgment of the trial Court, there is no discussion with respect to possession of the plaintiff. The conclusion seems to be arrived at only on the strength of sale deeds which were purportedly executed on 19.02.1997 and 19.03.1998, which recites about the possession, however, the trial Court did not frame any issue on the specific pleading in para 7 of the plaint that the plaintiff had not transferred the suit property to anyone in any manner and has not created any encumbrance on the same. This para 7 was denied by the appellants /



defendants in their written statement.

34. As regards the question of title, a perusal of the finding recorded by the trial Court with respect of the plaintiff, it would come to the fore that it relied on certain reports of Police Department, which were exhibited as Ex.-D/28. The rejection of the complaint of the plaintiff (Ex.-D/27), which was led by the defendants to establish that in fact the sale deeds were executed, however, this appears to be inadequate in view of the fact that there was no issued regarding the title. The plaintiff was not provided a fair opportunity to lead evidence for displacing the question of title based on purported sale deeds.

35. The reliance as placed by learned counsel for the appellant on the judgment of *Bhairab Chandra Nandan (Supra)*. It is to be considered that in the said case the Court considered that although the issue was not framed the parties went to trial and adduced evidence with this issue in mind and have drawn the attention of the Court to the existence of another house belonging to the appellant therein. In the present case, the evidence does not suggest that both the parties led their evidence on this issue. In fact the issue of possession has not at all been tried by the trial Court. There is no discussion and evidence on this aspect.

36. As regards, the judgment of *Sri Gangai Vinayagar Temple (Supra)*, in the said case the Hon'ble Apex Court has held that non framing of an issue is not significant when parties are aware of the rival cases and the issue is present in the connected matter. In fact the case as has been relied by the learned Senior Counsel has a completely different set of facts. In that case,



there were more than one civil suits. There were Suit Nos.5/1978, 6/1978 and 7/1978. The Hon'ble Supreme Court considered that there is no gainsaying that where parties were aware of the rival cases the failure to formally formulate an issue fades into insignificance, especially when it is prominently present in connected matters and extensive evidence has been recorded on it without demur. It is thus, clear that in the said case on the issues evidence was led and in the connected matter that very issue was present. Hence, that case is also not applicable in the present matter.

37. As regards the case of *Sunder Singh (Supra)*, learned counsel refers to the same for the proposition that the Court has to arrive at a finding that the re-trial was necessary and that exercise of discretionary powers under Rule 23/20-A should be exercised very cautiously. In the present case, the First Appellate Court has clearly recorded the satisfaction in para 16, 18 and 19 and specifically reverse the judgment and decree in para 20 then remanded the matter back after framing two issues on the facts in terms of para 18. Thus, the requirement of Order XLI Rule 23A and Rule 25 has clearly been satisfied. Thus, the same is also not applicable in the facts of the present case.

38. As regards the decision in the case of *Manju Bai (Supra)* passed by co-ordinate Bench of this Court, the Court has held that the matter was remanded back in a casual manner. The facts of the case were that the First Appellate Court considered it inappropriate that the situation of the land cannot be ascertained without spot inspection. Thus, the matter was directed to be remanded. This finding of the First Appellate Court was not found



favour with the High Court. However, in the present case, remand is not casual. It has specifically been recorded that issues which were present in terms of Order XIV Rule 1, 2 and 3 have not been framed and the evidence on the same have not been recorded properly. As such this case is also not applicable in the facts of the present case.

39. The same is the position in the case of *Shivdayal (Supra)*. In this case also co-ordinate Bench of this Court has also held that before remanding the case back finding of the trial Court have to be reversed, however, in the present case, there are no issues on the question of title and possession. Hence, the said case is also not applicable in the peculiar facts of the present case.

40. The same would be the position in the cases of *Murari Lal (Supra)* and *Syed Rahimunnisa (Supra)*. In the case of *Syed Rahimunnisa*, the Hon'ble Apex Court held that it was not considered that any case for remand was made out or not. In the present case, it is clear satisfaction and conclusion of the Appellate Court that the case of remand is made out and not only this, the reason was assigned and two issues on facts have been framed. As such the said case will also not help the cause of the appellants.

41. As regards the judgment in the case of *Harcharan (Deleted) Through LRs (1) Narendra Singh (Supra)*, the learned Senior Counsel stresses upon the fact that even if the appellate Court may frame issue and refer the same for trial to the court from whose decree the appeal is preferred directing to take additional evidence, if required. The appellate Court shall further direct that after trying the said issue the evidence be returned to it



with the finding and the reasons therefor. Thus, he stresses that only a limited remand should have been made, if at all remand was required. This contention of learned Senior Counsel also fails in insignificance for the reason that validity of the revenue entries singularly depends on the title of the appellants / defendants. The question of title is to be decided as per the issue framed by the Appellate Court in terms of para 18 and it will consequentially have effect on the issue of revenue entry also.

42. Moreover, there is no determination of possession, in fact in para 20 only one line passing remark regarding possession is there. As such on that issue also remand appears to be proper. As the question of title and possession have to be decided, the question of validity of revenue entry, its effect and interference in possession will have to be decided *de novo* as all the three of them depend on outcome of two issues framed by the Appellate Court.

43. In view of the discussion and analysis made herein above, this Court does not find any perversity in the findings and conclusion drawn by the First Appellate Court. In the limited jurisdiction in an appeal under Order XLIII Rule 1(u) of CPC, this Court will not go beyond the test of checking the perversity of the fact finding recorded by the Court in original as well as the appellate proceeding, keeping in mind that the appeal under such provision has to be heard and decided in the manner as if a second appeal is being considered in terms of section 100 of CPC. As such, in absence of any perversity, interference is not warranted.

44. Consequently, the present appeal fails and is hereby dismissed. No



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MA-2990-2025

order as to costs.

Certified copy as per rules.

(PAVAN KUMAR DWIVEDI)
JUDGE

Anushree