

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 5th OF APRIL 2022.

MISC. APPEAL NO. 1021 of 2018.

Between:-

SMT. MANJU BAI, W/O SHRI SANJEEV SINGH JAT, AGED ABOUT 38 YEARS, OCCUPATION CULTIVATION. R/O HIG COLONY, HARDA, TEHSIL 7 DISTRICT HARDA (M.P.).

(APPELLANT)

(BY SHRI HARPREET RUPRAH WITH SHRI UMA SHANKAR TIWARI, ADVOCATES)

AND

1. DASHRATH S/O RAMPYAR KATIA, AGED 40 YEARS, OCCU-CULTIVATION.

2. GULKI BAI W/O RAMPYAR KATIA, AGED ABOUT 75 YEARS, OCCUPATION- CULTIVATION.

BOTH R/O RIJGAON, TEHSIL HANDIA, DISTRCIT-HARDA (M.P.)

3. STATE OF M.PL; THROUGH COLLECTOR HARDA, DISTRICT-HARDA (M.P.)

(RESPONDENTS)

(BY SHRI BHUPENDRA SHUKLA, ADVOCATE FOR RESPONDENTS NO. 1 & 2.

MS. VIBHA PATHAK, PANEL LAWYER FOR
RESPONDENT NO. 3.)

This appeal coming on for hearing this day, the court passed the following:

-JUDGMENT-

With the consent of both the parties, this case has been heard and decided finally.

1. Appellant/defendant no.1 has filed this miscellaneous civil appeal under Order 43 Rule 1(u) of the Code of Civil Procedure,1908, being dissatisfied and aggrieved with the order dated 24/01/18 passed by District Judge Harda, District Harda (MP) in RCA/90/2017 thereby the First Appellate Court set aside the judgment and decree dated 27/09/17, passed by First Civil Judge Class 1 Harda, District Harda in Civil Suit No. 16A/2017 and remanded the matter back to the trial court for deciding afresh.

2. Facts giving rise to filing of the appeal briefly stated are that the plaintiffs/respondents no 1&2, filed the suit seeking relief of permanent injunction. The plaintiffs/respondent no 1&2 have also filed written statement and counter claim seeking relief of vacant possession of the agricultural suit land and permanent injunction. The trial Court in its judgment and decree dated 27/9/17 dismissed the suit and decreed the

counter claim partly in respect of delivery of vacant possession of the suit land to the appellant. Being aggrieved, the plaintiffs/respondent no. 1&2 had filed first regular appeal. The First Appellate Court has passed the impugned order and remanded the matter to the trial Court mentioning that the trial Court has not discussed Exhibit P/13 to P/19 in its judgment and application of the plaintiffs under Order 26 Rule 9 of the Code of Civil Procedure, 1908, dated 13/10/15 was wrongly dismissed on 21.01.2016 saying that the commission can not be ordered for the purpose of collecting evidence. The First Appellate Court held that the dispute between the parties is with regard to the situation of the land which can not be ascertained without spot inspection. Therefore, the First Appellate Court directed the trial court to get the suit land demarcated by Revenue Inspector. After receiving the report and recording the testimony of witness, if any, interested to give evidence, the trial court should dispose the matter properly.

3. Learned counsel for the appellant submitted that the power of remand has been exercised by the First Appellate Court de hors the statutory provisions and the impugned order suffers from legal error apparent on the face of the record. Therefore, the impugned order is liable to be set-aside.

4. On the other hand learned counsel for the respondent supported the order passed by the First Appellate Court.

5. I Have considered the submissions made by the learned counsel for the parties and perused the records. The Apex Court in the case of **Municipal corporation Hyderabad v. sunder Singh(2008) 8SCC485** has held that the power of remand should not be exercised in a routine or casual manner and the court should exercise the power with great circumspection. The trial court has not considered the merit of appeal at all and has remanded the case in a very casual manner. The direction issued by the First Appellate Court has been issued dehors statutory provisions contained in Rules 23, 23A and 25 of order 41 of the Code of Civil Procedure,1908. The impugned order passed by the First Appellate Court can not be sustained in the eyes of the law. It is accordingly, set aside. The civil appeal stands restored to the file of the First Appellate Court. The First Appellate Court is directed to decide the appeal on merits in accordance with the law.

No order as to cost.

(PRAKASH CHANDRA GUPTA)
JUDGE

MISHRA