
(2014) 2 JLJR 417

Jharkhand High Court

Case No: M.A. No. 36 of 2003

Manju Sinha

APPELLANT

Vs

Isnigdha Mukherjee

RESPONDENT

Date of Decision: April 1, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 41 Rule 23, Order 41 Rule 23A, Order 41 Rule 24, Order 41 Rule 25

Citation: (2014) 2 JLJR 417

Hon'ble Judges: Dhrub Narayan Upadhyay, J

Bench: Single Bench

Advocate: L.K. Lal, Advocate for the Appellant; Ayush Aditya, Advocate for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Dhrub Narayan Upadhyay, J.

This appeal has been preferred against the judgment dated 30th November, 2002 passed by the Addl.

District Judge-VII, Hazaribagh in connection with Title Appeal No. 2/1999 whereby and whereunder the Appellate Court has set aside the

judgment and decree passed by the Sub-Judge-IV in connection with Title Suit No. 110 of 1984 and remanded the matter back to the Trial Court

for writing a fresh judgment after critically and properly examination of witnesses both oral and documentary brought on the record on behalf of

both the parties and elaborate discussion of all the relevant issues. Learned Counsel appearing for the appellant has assailed the impugned

judgment and submitted that the impugned order of remand is highly erroneous and it does not come under Rules 23, 23A and 25 of Order XLI of

the Code of Civil Procedure. If the learned Appellate Court was not in agreement with the findings of the Trial Court, the Court should have

reversed the judgment and passed the decree accordingly. By referring judgment reported in 2005 (3) J.L.J.R. 587 ""Gaya Mahto vs. Leela Devi"" ,

it is submitted that the learned Addl. District Judge has not indicated any specific issue which was to be decided by the Trial Court. It is also not

indicated that the issues were not properly framed. The learned Addl. District Judge has also not indicated that the evidence and documents on

record are lacking to give finding by the Appellate Court, Needless to say that first Appellate Court has every right to discuss the evidence and

document available on record on his own and he can well differ with the finding of the Trial Court by giving reasoned judgment. It is also indicated

in Rule 24, Order XLI C.P.C.

2. Reliance has also been placed on the judgment reported in (2006) 9 S.C.C. 166; ""Kattukandi Edathil Krishnan and Anr. vs. Kattukandi Edathil

Valsan and Ors.

3. Learned Counsel appearing for the respondent has opposed the argument and submitted that the learned Addl. District Judge has very clearly

indicated misappreciation committed by the Trial Court in respect of evidence and document adduced and produced and remanding the case is

well within the purview of Rule 23A,, Order XLI of C.P.C.

4. It is further pointed out that the learned Addl. District Judge after discussing the evidence on record has observed that on the evidence available

on record the judgment and decree can be reversed and therefore, the impugned judgment does not suffer with any illegality.

5. I have gone through the impugned judgment and the material placed before me. Now a days it is experienced that the first Appellate Courts

instead of deciding issues involved have adopted an easier process to remand the matter back to the Trial Court for passing judgment afresh or for

retrial which is not the spirit of Rule 23A, Rule 25 of Order XLI. Unless the Appellate Court finds something vital, which has not been decided by

the Trial Court and the same cannot be decided by the Appellate Court because of lack of proper material on record then only remand can be

justified. I do agree with the submission advanced by the learned Counsel for the appellant that the learned Addl. District Judge has not indicated

whether issues framed were improper or whether additional issues are required to be framed or materials on record were lacking to decide the

issue by the Appellate Court. One surprising thing is also appearing from the impugned judgment that the learned Addl. District Judge instead of

remanding the case for retrial, has remanded the case back for writing a fresh judgment on the evidence and document available. I do not think that

such order is sustainable in law and such order is expected to be passed by exercising appellate jurisdiction.

6. In the result, the impugned judgment dated 30th. November, 2002 passed by the Addl. District Judge-VII, Hazaribagh in connection with Title

Appeal No. 2/1999 stands set aside. The matter is remitted back to the Court of Addl. District Judge-VII, Hazaribagh or his successor with a

direction to pass appropriate judgment on the material available on record in Title Suit No. 110/1984 after granting hearing to the parties within

four months from today.

7. It is made clear that the plaintiff as well as defendant shall ensure their appearance within a fortnight from today so that the matter may be

decided within the time indicated above.

8. This appeal is," accordingly, allowed. The Office is directed to remit the L.C.R. back within one week, if possible through special messenger.