



2026:CGHC:8657

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 26 of 2017

1 - Sita Ram S/o Late Ram Swaroop Khemuka, Aged About 46 Years R/o Janjgir, Tah. Janjgir, Distt. Janjgir-Champa, ChhattisgarhDefendant No.3, Chhattisgarh

... **Petitioner(s)**

versus

1 - Pawan Kumar (Died) Through Les As Per Honble Court Order Dated 15-09-2025

1.1 - Smt Usha Devi Wd/o Late Shri Pawan Kumar Agrawal Aged About 62 Years R/o Chakradhar Nagar, Raigarh, Chhattisgarh (C.G.)

1.2 - Ashish Agrawal S/o Late Shri Pawan Kumar Agrawal Aged About 34 Years R/o Chakradhar Nagar, Raigarh, Chhattisgarh (C.G.)

1.3 - Manish Agrawal S/o Late Shri Pawan Kumar Agrawal Aged About 32 Years R/o Chakradhar Nagar, Raigarh, Chhattisgarh (C.G.)

1.4 - Sweety Agrawal @Asha D/o Late Shri Pawan Kumar Agrawal Aged About 35 Years R/o Chakradhar Nagar, Raigarh, Chhattisgarh (C.G.)

2 - Om Prakash S/o Late Ram Swaroop Khemuka, Aged About 48 Years R/o Main Road, Near State Bank Of India, Janjgir, Tah. Janjgir, Distt. Janjgir-Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh

3 - Shakuntla Devi W/o Late Suresh Kumar Khemuka, Aged About 38 Years R/o Niharika Road, Shankar Nagar, M I G-115, Korba, Distt. Korba, Chhattisgarh, District : Korba, Chhattisgarh

4 - Muskan D/o Late Suresh Kumar Khemuka, Aged About 17 Years Presently Aged About 19 Years R/o Niharika Road, Shankar Nagar, M I G-115, Korba, Distt. Korba, Chhattisgarh, District : Korba, Chhattisgarh

5 - Ginni Bai (Died And Deleted) As Per Honble Court Order Dated 15-09-2025

6 - Madan Lal S/o Late Ghasi Ram Agrawal, Aged About 61 Years R/o Main Road, Near State Bank Of India, Janjgir, Tah. Janjgir, Distt. Janjgir-Champa, ChhattisgarhDefendants No. 1 To 6, District : Janjgir-Champa, Chhattisgarh

... Respondent(s)

For Appellant/s	:	Shri Abhijeet Mishra, Advocate.
For Legal Representatives of Respondent No.1	:	Shri Somnath Verma, Advocate.
For Respondent No.6	:	Ms. Vidhi Matlani, Advocate holding the brief of Shri Sanjay Agrawal, Advocate.

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

18.02.2026

1. The appellant/ defendant No.3 has preferred this miscellaneous appeal challenging the validity and propriety of judgment/ order dated 16.11.2016 passed by the learned District Judge, Janjgir-Champa in Civil Appeal No.03-A of 2015 (Pawan Kumar Vs. Om Prakash and Others), whereby the judgment and decree passed by the learned trial Court in Civil Suit No.48A of 2003 was set aside and the case was remitted back to the trial court to decide it afresh after appreciating evidence and affording an opportunity of hearing to the parties.
2. The facts, in brief, are that Pawan Kumar/ plaintiff filed a suit for declaration of title and permanent injunction against the defendants, *inter alia* on the ground that the suit property admeasuring 1.09 acres was recorded in the name of his father in the year 1980. There was a

partition amongst the members of family and a memorandum of partition was reduced into writing on 29.1.1990. The suit house mentioned in Schedule "A" fell in the share of the plaintiff, who spent a huge amount in its renovation. The Tehsildar passed an order of partition on 18.9.1995 but Sub-Divisional Officer (Revenue), Janjgir remanded the matter. Thereafter, the Tehsildar passed a fresh order on 30.6.1997 but failed to consider memorandum of partition dated 29.1.1990. The plaintiff pleaded that he was in possession of the property whereas, the defendants are interfering with his peaceful possession. Defendant No.3 filed a written statement and denied the factum of partition. It was pleaded in the written statement that the plaintiff challenged the order dated 30.6.1997 passed by Tehsildar by filing an appeal before the Sub-Divisional Officer (Revenue) but the same was dismissed and said order attained finality, as it was not challenged before the superior revenue authorities. It was also pleaded that defendant No.2 sold 0.05 acres of land to one Pawan Modi through registered sale deed dated 27.6.2003. Defendants No.1 & 4 admitted memorandum of partition dated 29.1.1990. Learned trial Court framed issues, the parties led their evidence and the suit was dismissed vide judgment and decree dated 16.09.2014. The plaintiff preferred Civil Appeal No.21A of 2015 before the learned District Judge, which was decided on 12.5.2015, whereby the matter was remitted back to the learned trial Court to decide the additional issue framed on 28.1.2005 and pass judgment afresh.

3. Learned trial Court vide judgment dated 16.7.2015 again dismissed the suit. The plaintiff preferred Civil Appeal No.03A of 2015 before the learned District Judge, Janjgir-Champa and vide judgment/ order dated

16.11.2016, the learned Appellate Court remitted the matter for fresh consideration on all issues and set aside the judgment and decree dated 16.9.2014 & 16.7.2015. Defendant No.3 has preferred this appeal against the judgment and order dated 16.11.2016.

4. Learned counsel for the appellant would submit that the learned Appellate Court has erred in remanding the matter for fresh consideration without recording sufficient reasons as per mandate of Order 41 Rule 23, Rule 23-A or Rule 25 of CPC. He would contend that the learned Appellate Court ought to have assigned reasons to upset the findings arrived at by the learned trial Court. He would submit that the learned Appellate Court should have decided the case on merits according to the provisions of Order 41 Rule 24 of CPC. He would further submit that the order of remand cannot be passed as a matter of routine and prays to set aside the impugned order.
5. On the other hand, learned counsel appearing for legal representatives of respondent No.1/ plaintiff would submit that while deciding Civil Appeal No.21A of 2015 dated 12.5.2015 learned Appellate Court set aside the judgment and decree passed by the learned trial Court dated 16.9.2014 and issued a specific direction to consider and decide the additional issue framed on 28.1.2005. He would submit that the learned trial Court failed to comply with the said judgment dated 12.5.2015, therefore, the Appellate Court again remanded the matter. He would submit that the order impugned has been passed strictly in accordance with law and appeal deserves to be dismissed.
6. Heard learned counsel for the parties and perused the documents present on the record with utmost circumspection.

7. The suit filed by the plaintiff for declaration of title and permanent injunction was dismissed vide judgment and decree dated 16.9.2014. Civil Appeal No.21A of 2015 was filed by the plaintiff and vide judgment dated 12.5.2015, the matter was remitted back to the learned trial Court to consider and decide the additional issue framed on 28.1.2005. Learned trial Court pursuant to order dated 12.5.2015 considered the civil suit afresh and dismissed it vide judgment and decree dated 16.7.2015. Thereafter, in Civil Appeal No.03A of 2015, the learned Appellate Court remanded the matter again and directed the learned trial Court to consider the evidence properly. Learned trial Court has further been directed to record its conclusions on all issues and pass a fresh judgment, at the same time, the judgment and decree passed by the learned trial Court dated 16.9.2014 & 16.7.2015 were set aside.
8. The question for consideration would be as to whether remand was called for?

“The provisions relating to remand of civil case for trial are contained in Order 41 Rule 23, Rule 23A and Rule 25 of CPC. Order 41 Rule 24 of CPC states that where evidence on record sufficient, Appellate Court may determine the case finally.”

9. The above-referred provisions are reproduced herein below:

“23. Remand of case by Appellate Court:— Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its

original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23A. Remand in other cases.—Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a retrial is considered necessary, the Appellate Court shall have the same powers as it has under Rule 23."

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.—Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within such time as may be fixed by the Appellate Court or extended by it from time to time."

10. The order 41 Rule 32A of CPC has been inserted in the Code of Civil Procedure, 1908 by Act No.104 of 1976 which came into force from 01.02.1977. According to the said provision, the appellate Court may remand the suit to the trial Court even though the said suit has been disposed of on merits. It provides that where the trial Court has disposed of the suit on merits and a decree is reversed in Appeal and the appellate Court considers re-trial necessary, the appellate Court

may remand the suit to the trial Court. Thus, on twin conditions being satisfied, the appellate Court can exercise power of remand under Order 41 rule 23-A CPC. However, in the instant case, the lower appellate Court even without meeting the reasoning of the trial Court recorded on all the issues and even without considering that re-trial is necessary, has remanded the matter. At this juncture, the principles laid down by the Supreme Court in the matter of **P. Purushottam Reddy and Another vs. Pratap Steels Ltd.** (citation) are to be seen wherein it has been observed at para 10 as under:

“10. In 1976, Rule 23-A has been inserted in Order 41 which provides for a remand by an appellate court hearing an appeal against a decree if (i) the trial court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in appeal and a retrial is considered necessary. On twin conditions being satisfied, the appellate court can exercise the same power of remand under Rule 23-A as it is under Rule 23.”

11. Similar is the observation made by the coordinate Bench of this Court reported in **Anil Fulara vs. Devcharan and Ghanshyam Agrawal & Another vs. Devcharan** (citation) wherein at para 21 it has been observed as under:-

“21. The First Appellate Court neither considered nor recorded a finding that retrial is necessary which is one of the twin conditions for exercise of power under Order 41 Rule 23-A of CPC. Thus, the impugned judgment and decree was passed without reversing the decree of trial Court, as none of the issues raised and decided by the trial Court has been reversed in appeal by the First Appellate Court and without holding retrial is necessary, the First Appellate Court has

committed serious illegality in directing the wholesale and open remand in exercise of power under Order 41 Rule 23-A of CPC.....”

12. The Hon’ble Supreme Court in the matter of **Shivakumar and Others, vs. Sharanabasappa and Others**, reported in **(2021) 11 SCC 277** while dealing with the scope of remand in civil matters held in paras 26.3 and 26.4 as under:

“**26.3.** A comprehension of the scheme of the provisions for remand as contained in Rules 23 and 23-A of Order 41 is not complete without reference to the provision contained in Rule 24 of Order 41 that enables the appellate court to dispose of a case finally without a remand if the evidence on record is sufficient; notwithstanding that the appellate court proceeds on a ground entirely different from that on which the trial court had proceeded.

26.4. A conjoint reading of Rules 23, 23-A and 24 of Order 41 brings forth the scope as also contours of the powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an appellate court is to follow the mandate of Rule 24 of Order 41 CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a retrial is considered necessary that the appellate court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. An order of remand only on the ground that the points touching the appreciation of evidence were not dealt with by the trial court may not be considered proper in a given case because the first appellate court itself is possessed of jurisdiction to enter into facts and appreciate the evidence. There could, of course, be several

eventualities which may justify an order of remand or where remand would be e rather necessary depending on the facts and the given set of circumstances of a case.”

13. The Hon’ble Supreme Court in the matter of **Sirajudheen vs. Zeenath and Others**, reported in **(2024) 17 SCC 250** while dealing with the provisions of Order 41 Rule 23 and 23-A of CPC, held that a reversal must be based on cogent reasons. The relevant para 30 is reproduced herein below:

“30. After having taken note of the salient features of the impugned judgment as also the significant omissions therein, if we refer to the provisions empowering the appellate court to make an order of remand, it is difficult to find any justification for remand by the High Court in the present case. As noticed, the scope of remand in terms of Rule 23 of Order 41 CPC is extremely limited and that provision is inapplicable because the suit in question had not been disposed of on a preliminary point. The remand in the present case could only be correlated with Rule 23-A of Order 41 CPC and for its applicability, the necessary requirements are that "the decree is reversed in appeal and a re-trial is considered necessary". As noticed hereinabove, there is no reason whatsoever available in the impugned judgment as to why and on what basis the decree was reversed by the High Court. Obviously, the reversal has to be based on cogent reasons and for that matter, advertent to and dealing with the reasons that had prevailed with the trial court remains a sine qua non. Thus, remand in the present case cannot be held justified even in terms of Rule 23-A of Order 41 CPC.”

14. The Hon’ble Supreme Court in the matter of **Municipal Corporation, Hyderabad vs. Sunder Singh**, reported in **(2008) 8 SCC 485**, has held that the conditions precedent laid down therein must be satisfied. It is

further held that the order of remand should not be passed routinely.

15. In the present case, the suit was not disposed of upon a preliminary point, therefore, Order 41 Rule 23 of CPC would not attract. Rule 25 of Order 41 of CPC would also not apply as no additional issue was framed by the learned Appellate Court.
16. A perusal of the judgment passed by the learned Appellate Court dated 16.11.2016 would reveal that the learned Appellate Court has not considered any of the issues framed and decided by the learned trial Court and simply set aside the judgment and decree. Thus, the findings recorded by the learned trial Court on each of the issues were not reversed. Further, learned Appellate Court has not recorded a finding that a retrial was necessary.
17. Taking into consideration the above-discussed facts, the judgment and order passed by the learned Appellate Court in Civil Appeal No.03A of 2015 dated 16.11.2016 is hereby set aside. The Appellate Court is directed to decide the appeal on its own merits. The parties are directed to remain present before the learned Appellate Court on **20.4.2026**.
18. The record of the trial Court be sent back forthwith.

Sd/-

(Rakesh Mohan Pandey)
Judge

HEAD NOTE

ORDER 41 RULE 23A OF CPC : An order of remand may be passed under this provision only when the findings recorded by the learned trial Court are reversed in appeal and a retrial is considered necessary.