

Present:-**Sri Soumen Sarkar (WB 00889),
Additional District Judge,
3rd Court, Purulia.**

Title Appeal no. 128 of 2014

Order no. 73

Dated 21-03-2025

This day is fixed for passing order on the petition dated 17-01-2020 filed by the Appellant under Order 41 Rule 25 of the CPC.

Appellants have filed hazira through their Ld. Advocate.

Respondents have not taken any step today.

Case record is taken up for passing order.

Perused the case record; particularly the petition dated 17-01-2020 and deciphered that the appellants have stated therein that in the written statement the appellants/defendants stated before the Ld. Trial Court that there was previous litigation in between the predecessors-in-interest of the respondents/plaintiffs and the vendors of the appellants/defendants in respect of self same khatian i.e khatian no.13 of mouza Saremacha but the Ld. Trial Court failed to frame an issue regarding this matter as regards whether the suit is barred by res-judicata or not. The appellants/defendants have stated inter alia that certified copy of the Judgment and decree of Title Suit No. 131 of 1962 and certified copy of Judgment and decree of Title Appeal no. 33 of 1977

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could not be submitted before the Ld. Trial Judge because those documents were not within the knowledge of the appellants despite taking due care and diligence. It has been mentioned in the petition further that on 10-08-1917 Ld. District Judge, Purulia turned down the prayer for giving additional evidence by the appellants in this Appeal. Thus, finding no other alternative, the Appellants have failed the instant petition under Order 41 Rule 25 of the CPC for framing of an issue and to remit the case in remand before the Ld. Trial Court to take additional evidence as per under Order 41 Rule 25 of the CPC to decide the issue and to convey the same to this Appellate Court.

Ld. Advocate for the Appellant submitted before this Court that in paragraph no. 15 of their written statement filed before the Ld. Trial Judge it was averred that there was some litigation in respect of some land between Behari Singh Bhumij and Ram Singh Bhumij in one side and Sarbeswar Singh Bhumij and Bidhumukhi Singh Bhumij on the other side but ultimately Behari Singh Bhumij and Ram Singh Bhumij and/or their descendants lost the case. Having culled out the said averment in the written statement the Ld. Advocate for the appellants drew attention of this Court towards the issues framed by the Ld. Trial Judge and submitted that the Ld. Trial Judge ought to have framed an issue with regard to maintainability of the suit on account of res-judicata but the same was omitted. Therefore, Ld. Advocate for the appellant referred the certified copy of the Judgment and decree passed in Title Appeal no.33 of 1977 arising out of Title Suit no.235 of 1971 and buttressed that schedule property of the said suit and appeal tallies with the schedule of the present suit and appeal and also pointed out that the properties of the earlier suit are same as of the present suit and appeal. In view of such facts, the Ld. Advocate for the Appellant took support from the case law reported in **2022(2) ICC 490 (Karn.)** wherein the Hon'ble High Court at Karnataka was pleased to hold that the Ld. Trial Court considered the pleadings of both parties and framed proper and necessary issues and parties led evidence in the 1st Appellate Court remanded the matter directing trial Court to frame issue with regard to limitation in respect of the fact that the parties in the suit were fully aware about the rival case and led all evidence, it cannot be said the absence of issue was fatal which vitiates proceeding and as such, the Hon'ble High Court at Karnataka set aside the order remitting the case to the trial case. Furthermore, the Ld. Advocate for the Appellant referred another decision of Hon'ble Calcutta High Court reported in **(2013) 2 Cal HN(Cal) 1994, Arif Mondal -Vs.- Ratnakar @ Subhas Bose** wherein the Hon'ble High Court was pleased to

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observe that the Ld. Lower Appellate Court could have decided the issue of res-judicata by framing an additional issue, if so required, on the aforesaid point of res-judicata instead of sending the suit back on remand to the Ld. Trial Court for a fresh decision.

Thus, the Ld. Advocate for the Appellant concluded that this Appellate Court can very well frame an additional issue in this Appeal in respect of res-judicata and decide this Appeal taking on account the documents submitted by the appellants in this Appeal in support of the contention of res-judicata.

Having refuted submission of the Ld. Advocate for the appellants, the Ld. Advocate appearing for the respondents emphatically adverted that the prayer for framing of an additional issue in this Appeal by invoking under Order 41 Rule 25 of the CPC cannot be allowed as the written statement of the defendants/appellants herein does not specifically mention the suit number in order to be certain about the existence of earlier suit and as such, the defence taken therein appears to be illusive. Moreover, the Ld. Advocate for the respondents buttressed that this Appellate Court turned down the prayer of the appellants for adducing additional evidence but no revision was preferred against the said order no. 26 dated 16-12-2017. Thus, according to the Ld. Advocate for the respondents if an additional issue is framed with regard to res-judicata those documents which the appellants intend to bring on record in support of res-judicata cannot be taken into consideration. Consequently, Ld. Advocate for the respondents prayed for dismissal of the application.

After much cogitation on the trenchant arguments of both the parties this Appellate Court scrutinized the case record and the record of the Ld. Trial Court carefully and deciphered that in the written statement submitted before the Ld. Trial Court the defendants/appellants herein did not plead specifically that the land between Behari Singh Bhumij and Ram Singh Bhumij in one side and Sarbeswar Singh Bhumij and Bidhumukhi Singh Bhumij on the other side relates to the present suit property. It is pertinent to note here that the principle of res-judicata applies when the substantial question of law which has already been decided in earlier suit comes for consideration in another suit. But from the averment made in paragraph no.15 of the written Statement of the defendants it cannot be deduced that the suit talked about decided the substantial question as regard the title of a property which is involved in the present suit. Thus, the Ld. Trial Judge has rightly omitted to frame any issue on the point of res-judicata upon such evasive defense. This Appellate Court is of the view that upon such pleadings of defense no additional issue in respect of res-judicata can be framed herein this appeal also. Thus, this Court is left with no other alternative than to reject the prayer of the appellants.

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Hence, the petition dated 17-01-2020 filed by the Appellant under Order 41 Rule 25 of the CPC is hereby rejected on contest but without costs.

It is imperative to note here that this case falls in the list of '*Action Plan Targeted Case*' and as such, it has to be decided expeditiously.

Case is adjourned today.

Both the parties are directed to come prepared for argument of the Appeal on the next date positively.

Fixing **22-04-2025** for hearing of the Appeal.

Dictated and corrected by me

Additional District Judge,
3rd Court, Purulia

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3rd Court, Purulia.