

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. No. 87 of 2015**

1. Kusto S/o Late Dumri, Aged About 38 Years Caste- Sundi, R/o Village Dhanpunji, Tahsil-Jagdalpur, Civil And Revenue District-Bastar Place Jagdalpur Chhattisgarh
2. Smt. Vrindawati W/o Late Dumri Aged About 60 Years Caste- Sundi, R/o Village Dhanpunji, Tahsil-Jagdalpur, Civil And Revenue District-Bastar Place Jagdalpur Chhattisgarh
3. Ramprasad S/o Late Dumri, Aged About 35 Years Caste- Sundi, R/o Village Dhanpunji, Tahsil-Jagdalpur, Civil And Revenue District-Bastar Place Jagdalpur Chhattisgarh (Plaintiffs)

---- Appellants

Versus

1. Baliram S/o Late Khagpati, Aged About 60 Years Caste- Sundi, R/o Village Dhanpunji, Tahsil-Jagdalpur, Civil And Revenue District-Bastar Place Jagdalpur Chhattisgarh
2. State Of Chhattisgarh, Through- Collector- Jagdalpur District Bastar Chhattisgarh (Defendant)

---- Respondents

For Appellants	: Shri Rakesh Thakur, Advocate
For State/Respondent 2	: Ms. Sangeeta Mishra, Panel Lawyer on advance copy

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**ORDER****08/09/2015**

1. The instant Misc. Appeal under Order 43 Rule 1 (u) read with Section 151 of the Code of Civil Procedure, 1908 (for short 'the CPC') has been filed within its limitation.
2. Heard on admission.
3. The Appellants have filed this appeal against the judgment and decree passed in Civil Appeal No.5A/14 whereby and whereunder the learned First Appellate Court remanded the matter with directions

that an opportunity be given to the present appellants/ plaintiffs to file documents in rebuttal and take them on record and also both the parties be given opportunity to adduce evidence and pass a judgment afresh disposing the matter de novo on its merits. It further held that if required, issues framed earlier be amended and any other additional issue required be formulated. It has challenged that the First Appellate Court has seriously erred in law by not considering the fact under Section 107 CPC. The appellate Court have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein. The learned appellate Court has seriously erred by remanding the Civil Suit without reversing the judgment of the trial Court and without giving his verdict on the issues framed by the trial Court.

4. On behalf of the Appellants it is submitted that as the appellate Court has erred in provisions of Order 41 Rule 23 A CPC and Order 41 Rule 27 read with Section 151 CPC, hence the judgment and decree passed on 15.7.2015 be set aside. The appeal be restored to its original number and the appellate Court may kindly be directed to decide the appeal in accordance with law. He also submitted that the impugned judgment and decree passed be set aside.

5. For the purposes of appreciation regarding prayer in the instant Misc. Appeal, impugned judgment and decree passed by the trial Court perused.

6. As ordered in para 15 of the impugned judgment and decree it appears that directions were given for de novo trial and the judgment and decree passed on 26.7.2011 were set aside. So far as the jurisdiction to remand a case under Section 107 of the CPC is concerned, the appellate Court is authorized to remand the case. As per provisions of Order 41, the jurisdiction vests with the appellate Court for the remand of a matter under terms and conditions. Prima facie there is no illegality or impropriety shown for Order 41 Rule 23A and Order 41 Rule 27 read with Section 151 CPC.

7. Learned Counsel for the Appellants placed reliance on 2014 (2) CGLJ 2, Anish Fulara Vs. Devcharan wherein the Puisne Judge of this Court has held that the remand was not according to law. 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 re-trial 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 CPC. The learned Puisne Judge of this Court remanded the matter.

8. On appreciation of the cited case law and the directions made in para 15 of the impugned judgment and decree, it shows that the First Appellate Court has directed the trial Court for affording opportunity to both the parties for adducing additional evidence, taking it on record; and amending and framing issues, if necessary

for de novo trial. The facts mentioned in the judgment and decree passed by the Court below and the facts mentioned therein are different from the cited case law, hence the case law is not of any help to the appellants.

9. Looking to the entire facts and circumstances of the case, this Court is of the view that the Appellants have failed to prove any prima facie ground on which the instant Misc. Appeal be taken for consideration. It is held that there is no scope for hearing the instant Misc. Appeal.

10. Accordingly, the instant Misc. Appeal is dismissed as not maintainable at the motion stage itself.

11. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
JUDGE