

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.431 of 2018**

Subhash Pandey, S/o Late Jainarayan Pandey, Aged about 60 years, R/o Nayapara, District and Tehsil Raipur (CG)

----Petitioner

Versus

- 1.** Ram Kumar Dewangan, S/o Late Tavar Singh Dewangan, R/o Village Post Kunwargarh (Kunra), Abadi kshetra, Opposite Sardar Jeet Singh's house, Former Tehsil Dharsinwa, District Raipur (CG)
- 2.** Smt. Usha Pandey, W/o Late Suryanarayan Pandey, aged about 65 years, R/o Nayapara, District and Tehsil Raipur (CG)

---- Respondents

For Petitioner	:	Ms Shriya Mishra, Advocate
For Respondent No.1	:	Ms Medha Shrivastava, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

28/08/2018

1. The suit was originally instituted by the petitioner/plaintiff before the Second Civil Judge Class-I, Raipur for eviction, recovery of possession and damages, in which the plaintiff led his evidence and concluded his evidence. Thereafter, on 28.2.2013 the trial Court returned the plaint finding it beyond its pecuniary jurisdiction for Re-presentation to the court having jurisdiction. Thereafter, it was Re-presented before the Fourth Additional Judge to the Court of First Additional District Judge, Raipur in accordance with law. That suit was entertained and thereafter defendant No.2 was also noticed. During pendency of the suit, the petitioner/plaintiff filed an application under Section 151 of the CPC stating inter-alia that he has already led his evidence, therefore, further evidence is not necessary and the suit be disposed of so far as the plaintiff is

concerned on the basis of evidence adduced by him, which was opposed by defendant No.1 by filing reply stating inter-alia that the suit has been Re-presented after return of plaint in the Court of competent jurisdiction. Firstly, it should be treated as freshly presented suit and secondly, evidence is required to be taken afresh. The trial Court by its impugned order rejected the application filed by the petitioner/plaintiff under Section 151 of the CPC by holding that since the suit has been Re-presented in the Court of competent jurisdiction after return of plaint, it should be treated as freshly presented suit and therefore, the plaintiff is required to lead his evidence afresh. Feeling aggrieved against that order, this writ petition has been filed by the petitioner/plaintiff herein.

2. Ms Shriya Mishra, learned counsel for the petitioner/plaintiff, would submit that since evidence has already been led by the petitioner/plaintiff, therefore, he is not required to lead fresh/further evidence and the trial Court be directed to proceed from the stage at which the suit stood transferred to the present Court and the impugned order passed by the trial Court deserves to be set aside.
3. Ms Medha Shrivastava, learned counsel for the respondent No.1/defendant No.1, would submit that since it is freshly presented suit and normally when the plaint is directed to be returned for presentation to the proper court, it has to start from the beginning and the parties are required to lead their evidence afresh as defendant No.2 also be arrayed in the suit, as such, the trial Court is absolutely justified in directing for trying the suit

denovo.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
5. It is well settled that return of the plaint for presentation before the court of competent jurisdiction amounts to institution of fresh suit, requiring commencement of trial afresh even if same had concluded before court which had no jurisdiction and the latter suit cannot be considered a continuation of earlier suit and trial is to be concluded *de novo*. The Supreme Court in the matter of **Oil and Natural Gas Corporation Limited v. Modern Construction and Company**¹ held as under:-

“13. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order VII Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted *de novo* even if it stood concluded before the court having no competence to try the same.”

6. However, the Supreme Court in the matter of **Joginder Tuli v. S.L. Bhatia and another**² decline to interfere with the order of High Court holding that though when the plaint is directed to presentation to the proper court it has to start from the beginning *de novo* but since the evidence had already been adduced and

¹(2014) 1 SCC 648

² (1997) 1 SCC 502

concluded by the parties, and the High Court had directed proceed from that stage at which the suit stood transferred.

7. Reverting to the facts of the present case, it appears from the record that evidence has already been adduced by both the parties when the plaint was directed to be presented to the Court having pecuniary jurisdiction. The principle of law laid down in **Joginder Tuli** (supra) squarely applies to the facts of the present case, rather applies with full force, but considering the fact that defendant No.2 was added subsequently, it is held that the plaintiff will not be required to lead fresh/further evidence. However, the defendants are at liberty to lead their evidence in support of their stand taken in written statement.
8. In the result, the writ petition is allowed in part holding that the petitioner/plaintiff is not obliged to lead fresh/further evidence. However, the defendants are at liberty to lead their evidence in support of their stand taken in written statement. Since defendant No.2 was not impleaded when evidence was earlier adduced by the plaintiff, defendant No.2 is at liberty to cross-examine the plaintiff's witnesses which has already been examined. On an application being filed, the plaintiff will keep present his witnesses before the trial Court for examination. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-