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HIGH COURT OF CHHATTISGARH, BILASPUR

(Arising out of order dated 28.07.2014 in Civil Suit No. 6A of 2013 passed by the IVth Civil Judge, Class-II, Durg, Chhattisgarh)

Writ Petition (227) No. 604 of 2014

1. Ganesh Chandra Ghosh, S/o Late Kshitij Chandra Ghosh, aged about 30 years, R/o Village Mohlai, Tehsil and District Durg (C.G.)
2. Smt. Anita Ghosh W/o Shri Ravi Ghosh, D/o Late Kshitij Chandra Ghosh, aged about 36 years, R/o Panduka, Tehsil Panduka, District Hoogli (West Bengal)

---- Petitioners**Versus**

1. Dukhu S/o Late Nanku Dhobi, aged about 55 years, R/o Village Mohlai, Tehsil and District Durg (C.G.)
2. Shri D.S.L. Narayan Rao, S/o Late Venkataraju, aged about 66 years, R/o A/82, Karmachari Nagar, Sikola, P.S. Mohan Nagar, Durg, Tehsil and District Durg (C.G.)
3. Smt. Rukmini Bai W/o Prakash Dhar Diwan aged about 40 years, R/o Village Mohlai, Tehsil and District Durg (C.G.)
4. State of Chhattisgarh, Through Collector, Durg, District Durg (C.G.)

---- Respondents

For Petitioners	:	None
For Respondents 1 & 3	:	None
For Respondent No. 2	:	Shri Ashish Suranal, Advocate
For State/Respondent No.4	:	Shri R.K. Gupta, Deputy Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Order on Board****29/01/2018**

1. This writ petition under Article 227 of the Constitution of India is against the order by which the plaintiffs have been precluded from adducing evidence following an application under Order 7 Rule 14(3) and Section 151 of the Code of Civil Procedure (CPC).

2. Heard the learned counsel for Respondent No.2 and the learned Deputy Advocate General for the State.
3. The fact of the matter remains that the suit was decided by the trial court after noticing the non-appearance of the defendants; however, on merits, that is to say, otherwise than under Order 9 Rule 8 CPC. That was interfered with in a first appeal under Section 96 CPC and an order of remand was made directing that the trial court could have proceeded only under Order 9 Rule 8 CPC. That was affirmed in an appeal against that order of remand. Thereafter, the plaintiffs filed application invoking Order 7 Rule 14(3) CPC for opportunity to adduce evidence. The Trial Court held that it was bound to consider the situation as one falling under Rule 8 Order 9 CPC, in view of the order of remand.
4. The order of remand made through the first appeal has become final. That order of remand has been affirmed by the High Court as well. That being so, the only course open to the trial court was to act under Order 9 Rule 8 CPC. Therefore, the trial court did not have the authority to permit the plaintiffs to adduce further evidence or fresh evidence, in any manner by which the situation obtained as the result of remand order could be obliterated. Under such circumstance, there is no legal infirmity or jurisdictional error in the order impugned in this application under Article 227 of the Constitution of India. This petition, therefore, fails.
5. In the result, the writ petition is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice