(2018) 06 CHH CK 0229

Chhattisgarh High Court

Case No: Miscellaneous Appeal No. 103 Of 2015

Saroj Kumar And Ors		APPELLANT
	Vs	
Kamleshwar Prasad @ Kamlesh And Ors		RESPONDENT

Date of Decision: June 29, 2018

Acts Referred:
Code Of Civil Procedure, 1908 â€" Section 96, Order 41 Rule 27

Citation: (2018) 06 CHH CK 0229

Hon'ble Judges: Thottathil B. Radhakrishnan, CJ

Bench: Single Bench

Advocate: R.K. Pali, UNS Deo

Final Decision: Dismissed

Judgement

Thottathil B. Radhakrishnan, CJ

1. None appears on behalf of the Appellants.

2. Heard the learned counsel for the Plaintiff-Respondent No. 1 and the learned Government Advocate.

3. Ganesh Ram-Defendant No.4 and Kamleshwar Prasad @ Kamlesh-Plaintiff are the sons of Late Gaindu Ram. Defendants No. 1 to 3 are the

children of Ganesh Ram-Defendant No. 4. Gaindu Ram executed a Will bequeathing assets to Defendants No. 1 to 3. The Plaintiff/Respondent No.1

filed the suit seeking declaration as against that testamentary instrument.

4. The trial Court dismissed the suit holding that the Plaintiff did not produce the original Will but had produced only its photocopy. The lower appellate

Court passed the impugned order of remand taking into consideration the additional evidenced placed on record through an application under Order 41

Rule 27 of the Code of Civil Procedure, 1908, whereby the Plaintiff brought on record the certified copy of the Will executed by Gaindu Ram. The

question of proof of Will apart, the Plaintiff's burden to prove the grounds to set aside that Will had to be adjudicated in accordance with the provisions

of the Evidence Act and the provisions of the CPC. It was, obviously, therefore, that the lower appellate Court was inclined to make the impugned

order of remand thereby paving way for the parties on both sides to adduce evidence on all aspects of the case.

5. While there is no illegality or impropriety in the lower appellate Court having made the order of remand as a result of first appeal under Section 96

of the CPC, I am of the view that it would be appropriate to impose an order of costs on the Plaintiff since the order of remand was necessitated

primarily on account of the Plaintiff's deficit in tendering evidence before the Trial Court. Therefore, while affirming the impugned order of remand,

the 1st Respondent/Plaintiff is liable to be saddled with an appropriate order for cost.

6. In the result, while dismissing this appeal on all other grounds, the impugned order of remand is made conditional on the 1 st Respondent/Plaintiff

paying to Defendants No. 1 to 3 an amount of Rs.15,000/- as costs for all those three Defendants taken together. Such amount shall be remitted

before the trial Court within a period of four weeks from today failing which the order of remand made by the lower appellate Court will stand

recalled. On deposit of such amount of costs, the Court below will proceed to adjudicate in terms of the directions contained in the impugned order of

remand.

7. The parties are directed to mark their appearance before the lower appellate Court on 30.07.2018.