

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).4357 OF 2024
(ARISING OUT OF S.L.P (CIVIL) NO(S).9902/2023)

P.E. PRASANNAKUMARI & ORS.

APPELLANT(S)

VERSUS

T.K.AMBUJAKSHI (DEAD) THROUGH LRS.

RESPONDENT(S)

O R D E R

1. Heard the learned senior counsel appearing for the appellants and the learned senior counsel appearing for the third respondent.

2. The present appellants are the original defendants. A suit filed by the respondents-plaintiffs was decreed by the Trial Court. Being aggrieved by the decree of the Trial Court, the present appellants preferred an appeal under Section 96 of the Code of Civil Procedure, 1908 (for short, "the CPC") before the District Court being the First Appellate Court. The District Court *vide* judgment dated 31st October, 2013 allowed the appeal in part. The District Court proceeded to set aside the decree of the Trial Court and remanded the suit for fresh disposal in accordance with law.

3. Being aggrieved by the judgment and decree dated 31st October, 2013 of the First Appellate Court, the appellants preferred an appeal under Clause (u) of Rule 1 of Order XLIII of the CPC before the High Court. By the impugned judgment dated 22nd December, 2022, the High Court set aside the order of remand passed by the First Appellate Court and restored the decree of the Trial Court.

4. After having heard the learned senior counsel appearing for the parties, we find that there are more than one glaring errors committed by the High Court.

5. It was an appeal preferred by the appellants before the High Court. If the High Court was of the view that there was no merit in the appeal, the High Court could have at highest confirmed the order of remand passed by the First Appellate Court. However, as stated above, the High Court has proceeded to set aside the order of remand and restored the decree of the Trial Court. The original plaintiffs were not aggrieved by the order of remand.

6. The second error committed by the High Court is that substantial questions of law were not framed by the High Court as it is well-settled that an appeal from an order under Clause (u) of Rule 1 of Order XLIII of the CPC will be governed by the principles under Section 100 of the CPC.

7. The only logical order which the High Court could have passed was of setting aside the order of remand and directing the First Appellate Court to decide the appeal on merits. The reason is that the First Appellate Court had passed the order of remand by setting aside the decree in its entirety and while doing so, no adjudication was made on the factual and legal issues. The appellants cannot be deprived of the remedy of first appeal.

8. Accordingly, we set aside the impugned judgment dated 22nd December, 2022 passed by the High Court as well as the impugned

judgment dated 31st October, 2013 passed by the District Court in the Appeal bearing AS No.87/2008. We restore the Appeal bearing AS No.87/2008 to its original number to the file of the District Court at Alappuzha. We direct that the restored Appeal be listed before the Principal District Judge at Alappuzha on 22nd April, 2024 when the parties to this Appeal will remain present before the District Court.

9. Considering the fact that the restored Appeal is of the year 2008, the District Court will give necessary priority to the hearing of the Appeal.

10. All questions are left open to be decided by the District Court.

11. The Appeal is partly allowed on the above terms.

.....J.
(ABHAY S.OKA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
MARCH 18, 2024.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 9902/2023

(Arising out of impugned final judgment and order dated 22-12-2022 in FAO (RO) No. 191/2014 passed by the High Court Of Kerala At Ernakulam)

P.E. PRASANNAKUMARI & ORS.

PETITIONER(S)

VERSUS

T.K.AMBUJAKSHI (DEAD) THROUGH LRS.

RESPONDENT(S)

Date : 18-03-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA

HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) Mr. V. Chitambaresh, Sr. Adv.
Mr. Karthik S.D., AOR
Mr. C. Govind Venugopal, Adv.

For Respondent(s) Mr. A. Hariprasad, Sr. Adv.
Mr. Venkita Subramoniam T.R., AOR
Mr. Likhichand Bonsle, Adv.
Mr. Rahat Bansal, Adv.
Mr. Varun Mudgal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leaved granted.

The Appeal is partly allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of accordingly.

(ASHISH KONDLE)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)

[THE SIGNED ORDER IS PLACED ON THE FILE]