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BISWAJIT SUKUL

v.

DEO CHAND SARDA & ORS.

(Civil Appeal No. 9956 of 2018)

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SEPTEMBER 25, 2018

**[ABHAY MANOHAR SAPRE AND S. ABDUL NAZEER, JJ.]**

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*Code of Civil Procedure, 1908 – Or.XLI, r.22 – Appellant-plaintiff filed a suit for arrears of rent and eviction against the respondents-defendants – Suit was dismissed by the trial Court on finding that the defendant no.1 was plaintiff’s tenant and he did not default in payment of rent – Plaintiff filed first appeal and defendants did not file any cross objection u/Or.XLI, r.22 of CPC in the appeal – First Appellate Court dismissed the appeal and held that defendant no.1 was not plaintiff’s tenant – Revision petition was dismissed by the High Court – On appeal, held: First Appellate Court committed a jurisdictional error in deciding the legality and correctness of the issue ‘whether defendant no.1 was plaintiff’s tenant’, as plaintiff in his first appeal did not challenge the said finding because it was already answered in his favour – Defendants though suffered the adverse finding on this issue but did not file any cross objection questioning its legality – First Appellate Court had no jurisdiction to examine the legality and correctness of the finding on this issue and reverse it against the plaintiff as the same was not challenged by the defendants – High Court also committed the same mistake by not noticing the jurisdictional error committed by the First Appellate Court – Therefore, case remanded to the First Appellate Court to decide the first appeal filed by the plaintiff on its merits only to examine the legality and correctness of the issues which were decided against the plaintiff – Assam Urban Areas Rent Control Act.*

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**Allowing the appeal, the Court**

**HELD: The High Court should have remanded the case to the First Appellate Court for deciding the plaintiff’s appeal afresh on merits confining its enquiry by the First Appellate Court to decide only the legality and correctness of those issues, which**

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were decided by the Trial Court against the plaintiff and which led to the dismissal of suit. Thus, the case is remanded to the First Appellate Court to decide the first appeal filed by the plaintiff (appellant) afresh on its merits only to examine the issues which were decided against the plaintiff by the Trial Court. [Paras 20 and 21] [502-G-H; 503-A-B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9956 of 2018.

From the Judgment and Order dated 02.01.2014 of the Gauhati High Court at Guwahati in Civil Revision Petition No. 381 of 2002.

Manoj Goel, Shuvodeep Roy, Advs. for the Appellant.

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Avijit Bhattacharjee, Mrs. Upma Shrivastava, Ajoy Kr. Ghosh, Abhay Kant Mishra, Sushil Kr. Kabra, Rameshwar Prasad Goyal, Advs. for the Respondents.

The Judgment of the Court was delivered by

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**ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

2. This appeal arises from the final judgment and order dated 02.01.2014 passed by the Gauhati High Court at Guwahati in Civil Revision Petition No.381 of 2002 whereby the High Court dismissed the Civil Revision Petition filed by the appellant herein.

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3. In order to appreciate the short controversy involved in the appeal, it is necessary to set out the relevant facts hereinbelow.

4. The appellant is the plaintiff whereas the respondents are the defendants in the civil suit out of which this appeal arises.

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5. The appellant (plaintiff) claiming to be the landlord of a shop situated in holding No.257 (old)/58 (new) at Tulapatty Silchar Town (hereinafter referred to as "suit premises") filed a Civil Title Suit No.189/1977 against one Deo Chand Sarada (Respondent No.1) in the Court of Munsiff No.1 Cachar at Silchar. The suit was filed for claiming arrears of rent and eviction from the suit premises.

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6. According to the appellant (plaintiff), respondent No.1 was the appellant's tenant on a monthly rent. It was averred that respondent No.1 paid some money in advance to the appellant, which the appellant adjusted against the rent ending July 1977. It was averred that the

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A respondent thereafter failed to pay rent from August 1977 despite repeated demands and hence the suit was filed to claim arrears of rent and the eviction of the respondent as defaulter in payment of rent. The suit was filed under the provisions of Assam Urban Areas Rent Control Act (for Short 'The Act'). Defendant No.2 got himself impleaded in the suit claiming to be the necessary party. It was permitted. The respondents  
B filed the written statement and denied the material averments of the plaintiff.

7. The Trial Court on the basis of the pleadings framed following issues:

- C           **“1. Whether the suit is maintainable in fact and law?**  
              **2. Whether the suit is bad for non joinder of necessary parties?**  
              **3. Whether there is cause of action for this suit?**  
D           **4. Whether the defendant No.1 is a tenant under the plaintiff in respect of the suit house and if so whether defendant No.1 is a defaulter in payment of rent since August 1977?**  
              **5. Whether the plaintiff is entitled to a decree as prayed for?**  
E           **6. To what relief/reliefs the parties are found entitled to?”**

8. Parties adduced their evidence. The Trial Court by judgment/decree dated 23.12.1999 dismissed the suit. So far as issue No.1 is concerned, the Trial Court answered in favour of the plaintiff by holding that the suit is maintainable. So far as issue No.2 is concerned, it was  
F also answered in plaintiff's favour by holding that the suit is not bad for non-joinder of necessary parties and maintainable. So far as issue No.3 is concerned, it was answered against the plaintiff by holding that there was no cause of action to file a suit. So far as No.4 is concerned, it was divided in two parts. So far as first part is concerned, it was answered in  
G plaintiff's favour wherein it was held that defendant No.1 was the plaintiff's tenant in respect of the suit premises. In other words, it was held that the relationship of the landlord and tenant is established between the plaintiff and defendant No.1 in relation to the suit premises. So far as second part of issue No.4 is concerned, it was held against the plaintiff by answering that defendant No.1 is not a defaulter in payment of rent

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to the plaintiff. By answering these four issues, the Trial Court dismissed the plaintiff's suit. A

9. The plaintiff felt aggrieved and filed first appeal before the Civil Judge No.1 (Silchar), Cachar being Title Appeal No.14/2000. It is pertinent to mention here that the defendants did not file any cross objection under Order 41 Rule 22 of Code of Civil Procedure (hereinafter referred to as "the Code") against any of the findings recorded by the Trial Court against the defendants in the appeal. B

10. By judgment dated 14.08.2002, the first Appellate Court dismissed the appeal. The plaintiff felt aggrieved and filed revision in the Gauhati High Court. By impugned order, the High Court (Single Judge) dismissed the plaintiff's revision and affirmed the judgment of the First Appellate Court which gives rise to filing of the present appeal by way of special leave by the plaintiff in this Court. C

11. Heard Mr. Manoj Goel, learned counsel for the appellant and Mr. Avijit Bhattacharjee, learned counsel for the respondents. D

12. After hearing the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal in part and while setting aside the impugned order and also the judgment of the First Appellate Court, remand the case to the First Appellate Court for deciding the first appeal on merits in accordance with law as directed hereinbelow. E

13. In our considered opinion, the need to remand the case to the First Appellate Court has arisen for more than one reason as mentioned hereinbelow.

14. First, the First Appellate Court committed a jurisdictional error in deciding the legality and correctness of the first part of issue No. 4 on merits. F

15. Mere perusal of the judgment of the Trial Court would go to show that while answering the issues, the Trial Court had divided issue No. 4 in two parts. So far as first part is concerned, it was in relation to the question as to whether defendant No.1 was the plaintiff's tenant or not. In other words, it was in relation to the question as to whether the plaintiff was able to prove the relationship of landlord and tenant between him and defendant No.1 in relation to suit premises. Indeed, this was one of the main questions involved in the suit. G

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A 16. This question, i.e., first part of issue No.4 was decided by the Trial Court in plaintiff's favour wherein it was held that defendant No.1 was the plaintiff's tenant. So far as second part of issue No.4 is concerned, it was in relation to the question as to whether defendant No.1 was a defaulter in payment of rent to the plaintiff. This question was answered by the Trial Court against the plaintiff and in defendant B No.1's favour wherein it was held that defendant No.1 did not commit any default in payment of rent to the plaintiff. It is for this reason, the suit was dismissed.

C 17. The plaintiff in his first appeal did not challenge the finding of the Trial Court recorded on the first part of issue No.4 and rightly so because it was already answered by the Trial Court in his favour. The First Appellate Court, therefore, could not examine the legality and correctness of this finding in plaintiff's appeal unless it was challenged by the defendants by filing cross objection under Order 41 Rule 22 of the Code in the appeal.

D 18. As mentioned above, the defendants though suffered the adverse finding on first part of issue No. 4 but did not file any cross objection questioning its legality. In the light of these admitted facts arising in the case, the First Appellate Court had no jurisdiction to examine the legality and correctness of the finding on first part of issue No. 4 in E plaintiff's appeal and reverse it against the plaintiff.

F 19. Second, the High Court also committed the same mistake by not noticing the aforesaid jurisdictional error committed by the First Appellate Court. The High Court, in plaintiff's revision again, went into the legality of the findings of first part of issue No.4 on merits and affirmed the finding of the First Appellate Court. This finding ought to have been set aside by the High Court only on the short ground that the First Appellate Court had no jurisdiction to examine it in plaintiff's appeal.

G 20. In our opinion, the High Court should have noticed the aforementioned mistake and remanded the case to the First Appellate Court for deciding the plaintiff's appeal afresh on merits confining its enquiry by the First Appellate Court to decide only the legality and correctness of those issues, which were decided by the Trial Court against the plaintiff and which led to the dismissal of suit.

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21. In our opinion, in the light of what we have held above, we have no option but to set aside the impugned order and also the judgment of the First Appellate Court and remand the case to the First Appellate Court to decide the first appeal filed by the plaintiff (appellant herein) afresh on its merits only to examine the legality and correctness of the issues which were decided against the plaintiff by the Trial Court such as issue No. 3 and second part of issue No. 4.

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22. We, however, make it clear, that since the defendants did not file any cross objection in the appeal under Order 41 Rule 22 of the Code, they are not allowed to file the cross objection at such belated stage taking advantage of the remand of the appeal to the First Appellate Court by this Court.

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23. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. Impugned order and the judgment of the First Appellate Court are set aside. The case is remanded to the First appellate Court for deciding the plaintiff's first appeal afresh in accordance with law on merits as mentioned above.

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24. We, however, make it clear that we have not applied our mind to the merits of the controversy having formed an opinion to remand the case for the reasons mentioned above and hence the First Appellate Court would decide the plaintiff's first appeal on merits without being influenced by any of our observations. Let the appeal be decided within six months.

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