

(1969) 07 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Revision No. 369 of 1969

Vijai Raj

APPELLANT

Vs

Bhanwari Devi and Another

RESPONDENT

Date of Decision : 18-07-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1969) WLN 287

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Judgement

Jagat Narayan, J.—A preliminary objection has been taken that no miscellaneous appeal lies against the order of remand as it is not under Order 41, Rule 23 C.P.C. The reply is that as an order for the refund of court fee has been made, an appeal is maintainable. Reliance is placed on Ratan Raj V. Kripashankar ILR (1955) Raj. 895. That decision is not applicable as this order does not purport to be under Order 41, Rule 23 C.P.C. The preliminary objection is upheld. But on the prayer of the learned Counsel for the appellant, this is treated as a revision application.

2. The only provision for remanding a case in appeal is contained in Order 41, Rule 23 C.P.C., which is not applicable to the present case as the trial court decided all issues and recorded its findings on all of them. The judgment of the trial court is in accordance with Order 20, Rule 4(2) C.P.C. which lays down that the judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision. As such, the appellate court had no jurisdiction to remand the case u/s 151 C.P.C. The power to remand a case u/s 151 is to be used very sparingly. The appellate court should have considered the entire oral and documentary evidence and given its own findings.

3. The Lordships of the Supreme Court recently observed in a case remanded by the High Court for writing a more satisfactory judgment. If the High Court was of

the view that in reaching the conclusion the District Court had misconceived or mis-read the evidence or had ignored important evidence bearing on the question to be decided or had otherwise acted contrary to law, the High Court was bound to decide the question for itself. The High Court had no power to remand the case to the District Court for writing a more satisfactory judgment.

4. I accordingly set aside the order of remand and direct the District Judge to re-hear the appeal and decide it on merits in accordance with law. In the circumstances of the case, I leave the parties to bear their own costs In this revision application.