
(2013) 05 RAJ CK 0082

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6415 of 2008

Abdul Hameed and Others

APPELLANT

Vs

Gopa Ram and Others

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 3
Constitution of India, 1950 — Article 227

Citation : (2013) 3 WLN 389

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : Sanjeet Purohit, for the Appellant; R.K. Thanvi and Mr. Narendra Thanvi, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—Heard learned counsel for the parties. In this writ petition filed under Article 227 of the Constitution of India, the petitioners are challenging the validity of the order dt. 22.05.2008 (Annex. 6) passed by the trial Court whereby the trial Court denied to lead evidence to the petitioners plaintiffs solely on the ground that no right was reserved at the time of closure of evidence by the plaintiffs in the suit.

2. Learned counsel for the petitioner submits that it is not necessary to reserve the right to lead evidence in rebuttal but upon the facts and circumstances, which can be observed or impliedly accepted by the Court in the evidence for rebuttal is necessary, therefore, according to the facts of the case, the trial Court was under obligation to grant opportunity to lead evidence in rebuttal Learned counsel for the petitioners submits that for fair adjudication, the petitioners were to be granted liberty to lead evidence in rebuttal but it has not been given, therefore, the order impugned may be quashed.

3. Mr. R.K. Thanvi, learned Senior Advocate appearing on behalf of the respondents vehemently opposed the prayer and submits that as per Order 18

Rule 3 CPC it was mandatory for the petitioners plaintiffs to reserve the right to rebuttal but it has not been reserved by the petitioners, therefore, in view of the judgment rendered by Coordinate Bench of this Court reported in Jhuthi Devi Vs. Rasool Mohammed and Others, the order passed by the trial Court does not require any interference.

4. After hearing learned counsel for the parties, I am of the opinion that when the petitioners are not disputing the fact that no right was reserved at the time of closure of the evidence by the plaintiff to lead evidence in rebuttal then obviously in view of language of Order 18 Rule 3 of CPC and the judgment in case of Jhuthi Devi (supra), the petitioners are not entitled to get any opportunity to lead evidence in rebuttal. In view of above and while following the judgment rendered in case of Jhuthi Devi (Supra), I see no reason to interfere in the order impugned. Hence, this writ petition is hereby dismissed.