

(2014) 01 RAJ CK 0246
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1058 of 2004

Amar Chand

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151
Specific Relief Act, 1963 — Section 21(5)

Citation : (2014) 2 CDR 799

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : M.C. Jain, Advocate for the Appellant; D.P. Pujari, Advocate for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by the plaintiff-petitioner Amar Chand assailing the order of the Additional District Judge No. 1, Ajmer dt. 11.2.2004 (Ann. 5) whereby, the application filed by the petitioner under order 6 Rule 17 read with Sec. 151, CPC seeking amendment in the prayer clause in the suit filed by him for specific performance has been rejected. He filed the said application on the ground that the land with respect to which the decree for specific performance was sought has since been acquired and the compensation paid to the defendant, unless according to Sec. 21(5) of the Specific Performance Act (Sic Specific Relief Act) prayer is made for grant of compensation, such compensation can be granted to the petitioner and application therefore should be allowed to incorporate the necessary pleadings seeking further direction to the defendant respondent No. 4 to pay to the petitioner the compensation. Learned counsel for the defendant-respondent No. 4 has opposed the writ petition and argued that the order passed by the Additional District Judge No. 1, Ajmer dt. 11.2.2004 (Ann. 5) is perfectly justified and reasonable. Once the land has been acquired, khatetari rights of the defendant in the suit stood extinguished. No suit for specific performance thereafter can be maintained. There can be no question of permitting amendment in the suit and prayer for

payment of compensation to the petitioner. Learned counsel submitted that the suit was not decided on account of pendency of the present writ petition as this Court vide order dt. 18.5.2004 directed the trial Court to proceed further in the case but shall not pass the final order.

2. It is not disputed that suit for specific performance was filed with respect to the land, which has been acquired by the State and compensation paid to the defendant. The fact of acquisition was pleaded by the plaintiff in the in the plaint as the fact of acquisition of the land does not render the suit infructuous, if eventually the suit is decreed, the plaintiff may not be entitled to the decree of specific performance yet, he may be entitled to the amount of compensation received thereby. In view of above, the writ petition is allowed. The impugned order dt. 11.2.2004 (Ann. 5) passed by Additional District Judge No. 1, Ajmer is set aside. The application filed by the petitioner under order 6 Rule 17 read with Section 151 cc seeking amendment in the plaint is allowed. The trial Court may proceed in the light of the aforesaid direction.