

(2021) 02 RAJ CK 0139
In the Rajasthan High Court
Case No : Miscellaneous Application No. 82 Of 2016

Asha Ram

APPELLANT

Vs

Pushkarna Brahmin Bhimji Ka Mohala Vikas Samiti And Ors

RESPONDENT

Date of Decision : 24-02-2021

Acts Referred:

Rajasthan Premises (Control of Rent & Eviction) Act, 1950 — Section 3(vii)(b)
Code Of Civil Procedure, 1908 — Order 1 Rule 10, Order 21 Rule 97, Order 22 Rule 4,
Order 22 Rule 9

Citation : (2021) 02 RAJ CK 0139

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Muktesh Maheshwari, RSD Rajpurohit, K.N. Vyas, N.R. Choudhary

Final Decision : Allowed

Judgement

Heard learned counsel for the parties on application filed by the applicants under Order I Rule 10 CPC for being impleaded as party respondent in

S.B. Civil Misc. Application No. 82/2016 as respondents No.2/1/1 and 2/1/2.

It is inter alia indicated that S.B. Civil Second Appeal No.27/1994 was pending before this Court, wherein, father of the applicants - Udai Kishan was

party as respondent No.2/1 as legal representative of Lt. Sh. Damodar Das. The said Udai Kishan died during pendency of the said appeal on

20.4.2015, however, his legal representatives were not brought on record and the appeal came to be decided by judgment dated 1.12.2015, whereby,

the appeal was allowed.

Whereafter, the present Civil Misc. Application No.82/2016 was filed by Asha Ram - Uncle of the applicants seeking recall of the judgment dated

1.12.2015 passed in the second appeal. In the said application, Udai Kishan

though dead was impleaded as respondent No.2/1.

Submissions have been made that the applicants are in possession of the disputed premises after the death of Udai Kishan as tenant and in the

application, which has been filed seeking recall of the judgment dated 1.12.2015, the applicants are necessary parties and, therefore, they may be

substituted as legal representatives of deceased respondent No.2/1.

Reliance has been placed on *Banwari Lal v. Balbir Singh*: 2015 AIR SCW 5224.

The application is contested by learned counsel for the respondent No.1 (in Civil Misc. Application No.82/2016) inter alia indicating that against the

judgment dated 1.12.2015, Special Leave Petition was filed before the Hon'ble Supreme Court, in which, the appellant therein had moved an

application for impleadment of legal representatives of deceased Udai Kishan and had indicated six legal representatives. However, the present

application has been filed by two legal representatives only, which is not maintainable.

Further submissions have been made that the application filed by the applicants in the recall application under Order XXII Rule 4 and Order XXII Rule

9 CPC, for bringing on record the legal representatives of Lt. Udai Kishan already stands disposed of by this Court by holding that the respondents

other than respondent No.1, were merely proforma parties, and right to continue the recall application survives against respondent No.1 and, therefore,

the applicants cannot be permitted to take a circuitous route in now getting impleaded as party to the present application and, therefore, the application

deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

A perusal of the record indicates that the second appeal had arisen out of proceedings initiated by Asha Ram alongwith one Moolraj under Order XXI

Rule 97 CPC and in the second appeal, apparently Udai Kishan was impleaded as legal representative of Damodar Das and/or in his individual

capacity. Admittedly, said Udai Kishan died during pendency of the second appeal, however, his legal representatives were not brought on record and

the appeal came to be decided by order dated 1.12.2015.

In the Special Leave Petition also, insofar as, the applicant (Asha Ram) is concerned, the application was made for impleadment of legal

representatives of Udai Kishan by indicating Udai Kishan as proforma respondent and in view thereof, the application as filed by the applicants in Civil

Misc. Application No.82/2016 under Order XXII Rule 4 & 9 CPC came to be decided by this Court.

So far as the claim made by the applicants is concerned, which pertains to their status as tenants in the suit premises, which is governed by the decree

dated 1.12.2015, regarding which, the application for recall has been made, though they are not necessary parties, looking to their status as claimed

(tenants), they are certainly proper parties to the present application and, therefore, their prayer for impleadment deserves acceptance.

So far as the objections raised by learned counsel for respondent No.1 regarding non-impleadment of all the legal representatives as indicated in the

Special Leave Petition filed before the Hon'ble Supreme Court is concerned, a perusal of the application before Hon'ble Supreme Court (filed as

Annex.R/1/2) indicates that the same contains the name of six legal representatives, however, as the applicants have categorically claimed that from

among the legal representatives they alone are tenants in the subject premises, therefore, in terms of provisions of Section 3(vii)(b) of the Rajasthan

Premises (Control of Rent & Eviction) Act, 1950, the applicants alone would be entitled to be joined as tenants.

So far as the issue of maintaining the application for impleadment under Order I Rule 10 CPC after the application filed by the applicant (Asha Ram)

under Order XXII Rule 4 & 9 CPC has been disposed of by this Court is concerned, the claim of the applicants under Order I Rule 10 CPC is not

affected only on account of the disposal of the applications under Order XXII Rule 4 & 9 CPC filed by Asha Ram.

Consequently, the application filed by the applicants under Order I Rule 10 is allowed. The applicants are permitted to be impleaded as party

respondents No.3 & 4 to the present application.

Amended cause title be filed.

Office is directed to amend the online record as per amended cause title.

Learned counsel for the respondents prays for time to prepare on the merit of the application as he was under the impression that the Court will hear

the matter on his preliminary objections only. The impression carried on by learned counsel is apparently without any basis.

If he has to raise any preliminary objections, he has to raise the objections and respond to the merits of the application simultaneously.

In view of the submissions made about the counsel being not prepared on merits of the application today, list the application on 3rd March, 2021.