
(2012) 07 RAJ CK 0067
In the Rajasthan High Court
Case No : Civil First Appeal No. 394 of 2011

Baldev Singh

APPELLANT

Vs

Smt. Guddi Devi and Others

RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 96
Rajasthan Panchayati Raj Act, 1994 — Section 109

Citation : (2013) 2 CDR 778 : (2013) 2 RLW 1133

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : J.K. Bhaiya, for the Appellant; Abhinav Jain, for the Respondent

Judgement

Vineet Kothari, J.—The present appeal has been filed by the plaintiff Baldev Singh being aggrieved by the judgment and decree dtd. 21.7.2011 passed by the learned Additional Dist. Judge (Fast Track) No. 1, Hanumangarh in civil suit No. 34/2011- Baldev Singh vs. Guddi Devi and Ors. whereby the suit filed by the plaintiff for injunction has been dismissed under Order 7 Rule 11 C.P.C. on the application filed by the defendant No. 1 Smt. Guddi Devi, who at the relevant point of time was Sarpanch of the Gram Panchayat. The learned court below has dismissed the suit at the anvil of Order 7 Rule 11 C.P.C. by assigning reasons in para 11 of the judgment that since prior mandatory notice as required u/s 109 of the Rajasthan Panchayati Raj Act, 1994 was not served on the Gram Panchayat, therefore, the suit filed by the plaintiff was not maintainable and therefore, the application filed by the defendant No. 1 Smt. Guddi Devi under Order 7 Rule 11 CPC deserves to be allowed and the suit deserves dismissal.

2. Being aggrieved by the said judgment and decree dtd. 21.7.2011, the appellant-plaintiff has preferred the present appeal u/s 96 C.P.C.

3. The learned counsel for the plaintiff-appellant Mr. J.K. Bhaiya submitted that since allegations were made in the personal capacity against Smt. Guddi Devi and Gram Panchayat was not impleaded as defendant in the suit, going by the

plaintiff's averments, the suit could not have been dismissed under Order 7 Rule 11 C.P.C. and consequently, the judgment under appeal deserves to be set aside and the matter deserves to be sent back to the learned trial Court for deciding the same on merits.

4. On the other hand, Mr. Abhinav Jain, learned counsel appearing for the defendant No. 1 Smt. Guddi Devi submitted that Section 109 of the Rajasthan Panchayati Raj Act, 1994 is of mandatory nature and the encroachments by the plaintiff beyond the this given in his patta was intended to be removed by taking due process of law by defendant No. 1 not in her personal capacity but in official capacity as Sarpanch with the police aid, if necessary, therefore, for want of impleadment of necessary and proper party, namely, Gram Panchayat in the suit, the suit was not maintainable. The learned Court below was justified in rejecting the suit itself as barred by law in the absence of prior notice u/s 109 of the Act and there is no error in the impugned judgment.

5. Section 109 of the said Act is reproduced below for ready reference:

109. Suits etc. against Panchayat, Panchayat Samiti and Zila Parishad:-

(1) No suit or other civil proceeding against a Panchayati Raj Institution or against any member, officer or servant thereof or against any person acting under the direction of a Panchayati Raj Institution or any member, officer or servant thereof for anything done or purporting to be done under this Act in its or his official capacity:-

(a) shall be instituted until the expiration of two months, after notice in writing, stating the cause of action, the name and the place of abode of the intending plaintiff and the nature of the relief which he claim, he has been delivered or left at its office or, in the case of a member, officer, servant or person as aforesaid delivered to him or left at the office or at his usual place of abode, and the plaint shall in each such case contain a statement that such notice has been so delivered or left, or

(b) shall be instituted, unless it is a suit for the recovery of immovable property or for a declaration of title thereto, otherwise than within six months after transfer next the accrual of the alleged cause of action.

(2) The notice referred to in Sub-sec. (1), when it is intended for a Panchayat, Panchayat Samiti or a Zila Parishad, shall be addressed to the Sarpanch, Vikas Adhikari or the Chief Executive Officer respectively.

6. The aforesaid provision clearly requires that no suit or other civil proceedings against Panchayati Raj Institution or against any member, officer or servant thereof for anything done or purporting to be done under this Act in its or his official capacity shall be instituted until a prior notice is served upon such Panchayati Raj Institution and maximum period of two months is given in the said notice. The said provision has been held to be mandatory in large number of cases.

7. In the present case also, purported and intended action of removal of encroachment by the plaintiff by the defendant No. 1 Smt. Guddi could not be done in her personal capacity. Had she not been the Sarpanch of the Gram Panchayat at the relevant point of time, she could not have initiated any action for removal of alleged encroachment by the plaintiff. Therefore, merely by levelling personal delegations against her of malafides, it cannot be said that suit is not directed against her in her capacity as Sarpanch or as a member or officer of Panchayati Raj Institution, Since drafting of plaint is in the domain of the plaintiff, by levelling personal allegations and not impleading the Panchayati Raj Institution itself as defendant, the plaintiff cannot escape operation of mandatory provisions of law. The protection given to the officers and elected representatives working in Panchayati Raj Institution would go off the board, if these kinds of suits impleading them in their personal capacity were allowed to be tried by courts of law without undergoing mandatory provisions of Section 109 of the Act. This practice cannot be encouraged.

8. In the opinion of this Court, therefore, the learned trial Court was justified in dismissing the suit for want of compliance with the mandatory provisions of Section 109 of the Act and no error is found in the same. Accordingly, the present appeal of the plaintiff is dismissed. No order as to costs. A copy of this order be sent to the court below and the respondents forthwith.