

(2016) 04 RAJ CK 0056

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1708 of 2014

Bhanwar Lal Kalani

APPELLANT

Vs

Shri Sacchiyay Mataji Trust, Osiyan & Another

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2016) 2 DNJ 905

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : P.M. Vyas, Advocate, for the Appellant; Arpit Bhoot, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—This writ petition has been filed by the petitioner aggrieved against order dated 16.09.2013 passed by the trial court, whereby, the application filed by the petitioner under Order 6, Rule 17 CPC has been rejected.

2. The petitioner filed a suit in the year 1999 for declaration and injunction; in the suit it was, inter alia, indicated that the trust deed of the Trust required appointment/election of the Trustees by rotation and the sequence of rotation has been indicated therein, however, for all these years the said stipulation in the trust deed has not been followed and prayed for relief in the terms that till such time the proper election by rotation is not done, no policy decision be taken by the Trustees.

3. The suit remained pending and thereafter in the year 2012 the present application was filed by the petitioner, inter alia, indicating that the suit is pending for over thirteen years and in the past thirteen years various appointments/elections of the Trustees of the Trust have taken place and wanted to place the same by way of amendment in the plaint.

4. The application was not responded by the defendants, however, the same was

opposed.

5. The trial court on noticing that the amendment sought, which ran into 22 pages, would result in the change of the nature and the constitution of the suit, which cannot be permitted and, consequently, rejected the application.

6. It is submitted by learned counsel for the petitioner that the trial court committed error in rejecting the application, inasmuch as, by merely incorporating the subsequent events, the petitioner was not seeking any further relief and, therefore, the order impugned deserves to be quashed and set aside.

7. Learned counsel for the respondents duly supported the order impugned.

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

9. As already noticed herein before, the petitioner filed the suit seeking implementation of the terms of the trust deed and for that purpose indicated certain facts, which in the submissions of the petitioner, were in violation of the terms of the trust deed. The matter remained pending for over thirteen years and the present application was filed for bringing on record the changes which took place over a period of thirteen years. As in the submission of learned counsel for the petitioner the said changes are not required for adjudication of the principal dispute, the filing of application for amendment cannot be a continuous affair, inasmuch as, every year appointments/elections would take place and during pendency of the suit the petitioner cannot seek amendment of the suit for bringing on record the said facts as the relief claimed by the petitioner can be granted, if established based on the material already available on record.

10. Though the determination made by the trial court is apparently not justified, no interference is called for in the order impugned.

11. In view of the above discussion, the writ petition is dismissed.