
(2016) 09 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Revision (CR) No. 93 of 2016.

**Dinesh Chandra, S/o Mangi Lal Ji Brahman, Aged about 44 years -
Plaintiff @HASH Jamna Lal S/o Ekling Ji Lad (Brahman), R/o-Gilund,
Tehsil-Relmagra, District-Rajsamand**

Date of Decision : 15-09-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3

Citation : (2016) AIR(Raj) 187 : (2017) 1 RLW 814

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : Mr. Ashwini Kumar Babel, Advocate, for the Petitioners

Final Decision : Dismissed

Judgement

Mr. Sangeet Lodha, J. - This petition is directed against order dated 3.5.16 of the Civil Judge, Relmagra in Civil Suit No. 1/11, whereby an application preferred by the petitioners-defendants, seeking abatement of the suit as a whole on account of death of one of three plaintiffs, stands rejected.

2. The relevant facts are that the plaintiffs, Shankar Lal, Jamna Lal and Bheru Lal, occupying three different portions of a Nohra situated at Village-Gilund preferred a suit seeking permanent injunction inter alia against the petitioners-defendants in terms that they may not demolish the main gate of the Nohra. The suit is being contested by the petitioners-defendants by filing a written statement thereto. During the pendency of the suit, plaintiff no.1-Shankar Lal expired, however, no application was made for substitution of his legal representatives. The petitioners-defendants preferred an application seeking abatement of the suit as a whole stating that the interest of the plaintiff is common and the decree to be passed in the suit shall be a joint and inseverable and therefore, the surviving plaintiffs cannot prosecute the suit against the defendants.

3. The application stands rejected by the trial court observing that the plaintiffs are occupying three different portions in the disputed Nohra and they have approached the court for enforcement of their individual rights but since the

cause of action is common, a joint suit has been filed and thus, on account of death of one of the plaintiffs, the suit shall not stand abated as a whole. Hence, this petition.

4. Learned counsel appearing for the petitioners contended that on the death of one of the plaintiffs, the suit stands abated as a whole and the surviving plaintiffs cannot prosecute the suit inasmuch as in the suit filed, only a joint decree could be passed. Learned counsel submitted that in the event of suit being decreed, the fruit of the decree would be available to the surviving plaintiffs as also the legal representatives of the deceased plaintiff whereas the suit preferred by the plaintiff no.1-Shankar Lal stands abated.

5. Indisputably, the plaintiffs who are occupying three different portions in the Nohra have filed a joint suit for enforcement of their individual right to use the main gate of the Nohra inasmuch as it is based on a common cause of action. Obviously, each of the plaintiffs is entitled to maintain the suit for enforcement of his individual right to use the main gate of the Nohra and therefore, on account of death of one of the plaintiffs, the suit shall not stand abated as a whole and the surviving plaintiffs are competent to maintain the suit for the relief of injunction sought for in their individual right.

6. In this view of the matter, the order impugned passed by the Court below does not suffer from any illegality, irregularity or jurisdictional error so as to warrant interference by this Court in exercise of its revisional jurisdiction.

7. In the result, the petition fails, it is hereby dismissed.