

(2013) 08 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4287 of 2013

Dr. Gangasharan Gupta (since deceased) through Legal Representative

APPELLANT

Vs

Smt. Firoja (since deceased) through Legal Representatives

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : (2014) 1 WLN 295

Hon'ble Judges : Jitendra Kumar Ranka, J

Bench : Single Bench

Advocate : Amit Jindal, for the Appellant;

Final Decision : Dismissed

Judgement

Jitendra Kumar Ranka, J.—Instant writ petition has been filed by the defendant-petitioner assailing the order dt. 26.02.2013 passed by the learned lower appellate Court rejecting the application filed by the defendant-petitioner under Order 41 Rule 25 & Order 14 Rule 5 read with Section 151 seeking amendment in Issue No. 3 and also to frame additional issue as Issue No. 5. Counsel for the defendant-petitioner submits that the Issue No. 3, which has been framed by the trial Court, is not in consonance with the pleadings made by the defendant-petitioner in his written statement and, therefore, the Issue No. 3 deserves to be amended accordingly. Counsel further submits that apart an additional issue, as Issue No. 5, also deserves to be framed in view of the averments/pleadings made by the defendant-respondent in Para Nos. 7, 8 and 24 of the written statement. Counsel submits that in such circumstances, the defendant-petitioner rightly moved the application, referred to herein above, seeking amendment in the Issue No. 3 and also framing additional issue as Issue No. 5 but the lower appellate Court, without considering the averments made in the application and also without the material placed before it, has passed the order impugned rejecting the application and, therefore, the order passed by the lower appellate Court deserves to be set aside.

2. After hearing counsel for the defendant-petitioner, perusing the material available on record and the order impugned passed by the lower appellate Court, this Court does find any substance in the submission made by counsel for the defendant-petitioner for the reason that the lower appellate Court has specifically arrived at a finding that the Issue No. 3 has been framed as per the pleadings/ averments made by the plaintiff-respondent in Para No. 8 of the plaint and the plaintiff-respondent has not made any averment in his plaint regarding construction of room on the ground floor and construction of latrine and that apart a further finding has been arrived at by the learned trial Court that until and unless the averments made by defendant in his written statement are not denied by a plaintiff in his rejoinder, no issue can be framed on the basis of the pleadings made by a defendant in his written statement. The lower appellate Court has further arrived at a finding that as regards the instant case, the defendant-petitioner has disputed the facts in his written statement while the plaintiff-respondent has raised the dispute only in regard to the averments made in Para No. 8 of the plaint with regard to the construction. In this view of the matter, this Court does not find any manifest apparent error being committed by the learned lower appellate Court while passing the order impugned so as to call for interference of this Court under its limited scope of judicial review under Art. 227 of the Constitution of India. Consequently, the writ petition, being devoid of merit, is hereby dismissed. The stay application also stands dismissed.