

(2013) 05 RAJ CK 0201

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3702 of 2012

Firm Veer Chand Laxmi Narayan

APPELLANT

Vs

LR's of Shivnaryan and Another

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 14, Order 41 Rule 27

Constitution of India, 1950 — Article 227

Citation : (2013) 3 WLN 396

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Kaushal Sharma, for the Appellant; Manish Patel and Mr. O.P. Boob, for the Respondent

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—Heard learned counsel for the parties. The petitioner-defendant/tenant, has challenged the impugned order dt. 12.03.2012 passed by the learned first appellate Court of Additional District & Sessions Judge No. 1, Jodhpur in Civil Appeal (Decree) No. 13/06-Firm Veerchandra Laxminarayan vs. Shivnaryan & Ors., whereby the learned first appellate Court has rejected the petitioner's application under Order 11 Rule 12 & 14 read with Order 41 Rule 27 CPC, seeking to adduce additional evidence against the respondent-landlord viz. two "Will(s)", under which purportedly, the respondent/landlord got some property from the executor of the said Will and, therefore, the petitioner/defendant sought to contend that the respondent-landlord had no bonafide need on the basis of which, the landlord secured decree of eviction against him in Eviction Case No. 378/96 filed by the respondent/landlord.

2. The said Will is stated to be of the year 1998, whereas the suit for eviction was filed in the year 1996. The eviction suit filed by the respondents/landlord, came to be decreed on 14.02.2006 and the learned counsel for the respondents/

landlord informed the Court that in execution of the decree with respect of one suit filed for ground floor shop in the execution proceedings, the possession of the suit shop has already been handed over to the respondents/landlord/plaintiffs, however, on the first floor room of the suit premises, the defendant-tenant, who was the judgment-debtor in the other suit, in the present appeal filed against the eviction decree passed by the learned Court below, sought to file the additional evidence, which is not relevant to the present suit at all since the bequeath of certain properties under the Will of the year 1998, does not affect the trial of the present suit of eviction at all.

3. This contention raised by the learned counsel for the respondent-landlord has force and the question of Will by adducing the same as additional evidence at the appellate stage, cannot be allowed to be taken up by the defendant-tenant. Therefore, the learned appellate Court below has not committed any error in rejecting the said request by the impugned order dt. 12.03.2012. The order impugned does not require any interference by this Court under Article 227 of the Constitution of India, the scope of which is very narrow. Accordingly, the present writ petition filed by the petitioner-defendant-tenant is found to be devoid of any force and the same is hereby dismissed. The interim order dt. 19.07.2012 passed by a coordinate bench is hereby vacated. No costs. A copy of this order be sent to the concerned and the Courts below forthwith.