
(2011) 05 RAJ CK 0136
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3816 of 2011

Gordhan Das Muchchhal

APPELLANT

Vs

Sunil Kumar and Another

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 5
Transfer of Property Act, 1882 — Section 106

Citation : (2011) 05 RAJ CK 0136

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—Having heard the learned Counsel for the Defendant-Petitioner and having perused the material placed on record, this Court is unable to find any reason to consider interference in the impugned order dated 22.07.2010 whereby the learned Civil Judge (Sr. Division), Makrana has allowed an application moved by the Plaintiffs-Respondents under Order XIV Rule 5 CPC and has framed an additional issue on the question as to whether tenancy in question has been terminated by way of the notice served by the Plaintiff.

2. It is not in dispute that the property in relation whereof the suit has been filed by the Plaintiffs seeking ejectment of the Defendant-Petitioner and recovery of arrears of rent and damages for use and occupation, is situated at Makrana whereto the provisions of the Rajasthan Rent Control Act, 2001 do not apply; and the matter is governed by the Transfer of Property Act, 1882. As per the observations in the impugned order, the Plaintiff has taken the averments in the plaint that the tenancy was terminated by serving notice u/s 106 of the Transfer of Property Act, 1882. It is not the case of the Petitioner-Defendant that he admits termination of tenancy by way of the said notice.

3. In the given set of the facts and the law applicable, if the learned Trial Court, while framing the issues on 02.04.2009, omitted to frame the relevant issue on

the question of termination of tenancy by way of notice, it cannot be faulted in framing such an issue on the application moved by the Plaintiff. The issue as framed is directly relevant and necessary for determining the matters in controversy between the parties. The impugned order dated 22.07.2010, thus, remains unexceptionable and calls for no interference.

4. The writ petition fails and is, therefore, dismissed summarily.