

(2012) 07 RAJ CK 0077
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2892 of 2012

Govind Prasad

APPELLANT

Vs

Fateh Lal and Others

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 27, Order 6 Rule 17

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 3 WLN 551

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Advocate : K.L. Joshi and Mr. R.P. Singaria, for the Appellant;

Final Decision : Dismissed

Judgement

Narendra Kumar Jain-II, J.—Challenge in this writ petition is to the order dt. 29.11.2011 passed by the learned Additional District Judge, Bhilwara (for short "the appellate Court" hereinafter), whereby the appellate Court has dismissed the application filed by the petitioner-applicant under Order 41 Rule 27 CPC. Background facts in a nutshell is that the appellant has preferred an appeal under Order 41 Rule 1 CPC before the learned District Judge, Bhilwara, against the judgment and decree dt. 25.02.2006 passed by the learned Additional Civil Judge (Jr. Div), Bhilwara in Civil Original Suit No. 40/1991, with the submissions that the father of present respondent No. 1 has filed a suit against the father of the present respondents No. 2 to 7 for eviction of a shop and during the course of proceedings, the father of the appellant died, as a result, the appellant and the respondents No. 2 to 7 were taken on record as legal heirs of late Ram Prasad Gaggar and the present respondent No. 8 mortgaged the shop before the respondent No. 1, which has already been released from the mortgage. During the pendency of the appeal, the appellant-petitioner has preferred an application under Order 41 Rule 27 of CPC including photographs of shop in question. The respondent-plaintiff's tiled a reply to the application and raised objections.

2. After hearing both the parties, the learned lower Court has rejected the application of the petitioner vide impugned order dt. 29.11.2011.

3. Aggrieved by the order impugned dt. 29.11.2011 passed by the learned lower appellate Court in Civil Appeal No. 24/2006, this writ petition has been preferred by the petitioner with the prayer that the order dt. 29.11.2011 passed by the learned lower appellate Court may kindly be quashed and set aside while ordering to allow the application under Order 41 Rule 27 CPC.

4. It is contended by the Learned Counsel for the petitioner that the learned appellate Court has committed gross error in passing the order impugned dt. 29.11.2011 while ignoring the fact that the application under Order 6 Rule 17 of the CPC is still pending under consideration and till disposal of the aforesaid application, such type of order upon the application under Order 41 Rule 27 CPC cannot be passed. Therefore, the finding of the lower appellate Court is perverse, illegal, unjust, improper as well as against the well settled proposition of law. It is further contended by the Learned Counsel for the petitioner that the controversy between the parties is with regard to eviction of shop in question and in the application under Order 41 Rule 27 CPC, the appellant has clearly stated that two shops are lying vacant under the control of the plaintiff, which can fulfill the necessity of the plaintiff. It is also contended by the Learned Counsel for the petitioner that the learned appellate Court has observed in the order impugned that the Commissioner cannot be appointed for collection of the evidence.

5. I have heard the Learned Counsel for the petitioner and perused the order impugned dt. 29.11.2011. I have scanned through all the relevant documents placed on record.

6. The learned trial Court vide order impugned dt. 29.11.2011 has observed as under:

7. In the judgment rendered in case of Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, Hon''ble Apex Court elaborately considered the scope of interference under Art. 227 of the Constitution. In the said judgment, the Hon''ble Supreme Court held that of course, under Arts. 226 and 227 of the Constitution of India, interference of the High Court is permissible but it has been held that an improper and frequent exercise of this power will be counterproductive and will divest this extra-ordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principles. This resort to exceptional power is not to be exercised just for grant of relief in any individual case but should be directed for promotion of administrative of justice in the larger public interest. Powers under Art. 227 of the Constitution of India may be unfettered, therefore, high degree of judicial discipline is necessary.

8. Looking to the facts and circumstances of the case, without going into the merits of the case because the appeal is still pending before the appellate Court,

I do not find any substance in the submissions made by the Learned Counsel for the petitioner and I am of the considered opinion that the order impugned dt. 29.11.2011 passed by the learned Additional District Judge, No. 1, Bhilwara in Civil Appeal No. 24/2006, in the facts and circumstances of this case, does not suffer from any error, illegality or infirmity warranting interference by this Court in its supervisory jurisdiction under Art. 227 of the Constitution of India. In the result, this writ petition fails and is hereby dismissed in limine. There shall be no order as to costs. The learned lower Court is directed to decide the appeal expeditiously.