

(2022) 03 RAJ CK 0038

In the Rajasthan High Court

Case No : S. B. Civil Revision Petition No. 75 Of 2021

Gram Panchayat Gangana

APPELLANT

Vs

Prema Ram And Others

RESPONDENT

Date of Decision : 08-03-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 115, 151, Order 7 Rule 11(d)
Rajasthan Panchayati Raj Act, 1994 — Section 109

Citation : (2022) 03 RAJ CK 0038

Hon'ble Judges : Rameshwar Vyas, J

Bench : Single Bench

Advocate : Moti Singh, N.R. Choudhary

Final Decision : Allowed

Judgement

Rameshwar Vyas, J

This civil revision petition has been preferred under Section 115 of the Code of Civil Procedure by the petitioner-defendant No. 5 – Gram Panchayat Gangana against the Order dated 28.07.2021 passed by the Additional District Judge No. 7, Jodhpur Metropolitan in Civil Original Case No. 02/2021 (Prema Ram & Ors. Vs. Bhinya Ram & Ors.), whereby the application under Order VII, Rule 11 (d) read with Section 151 of C.P.C. filed by the petitioner-defendant No. 5 was rejected. Brief facts of the case are that the plaintiffs – Prema Ram and others (respondent Nos. 1 to 4 herein) filed a civil suit for declaration and injunction against the defendant Nos. 1 to 4, members of the Jat Community (proforma respondent Nos. 5 to 8 herein) and the defendant No. 5 - Gram Panchayat (petitioner herein) with the averments that suit property vested in the Gram Panchayat Gangana, Panchayat Samiti Luni, District Jodhpur. The plaintiffs and the defendant Nos. 1 to 4 were having joint interest in the suit property, which was purchased in the name of some of the members of the Community. No member of the community was having independent personal interest in the suit property, however, for last two months, it appeared that the defendants were

adamant to interfere in the dispute property, for which they did not have any right. Hence, the suit for declaration and injunction was filed against the defendant Nos. 1 to 4, who are members of the Jat Community. The Gram Panchayat Gangana was also impleaded defendant No. 5 in the suit on the ground that the patta of the land in question was issued by the Gram Panchayat. During the pendency of the suit, defendant No. 5 (petitioner herein) filed an application under Order VII, Rule 11 (d) read with Section 151 of C.P.C. with the prayer to reject the suit on the ground that before filing the suit, no notice under Section 109 of the Rajasthan Panchayati Raj Act, 1994 (afterwards referred to as "the Act of 1994") was served by the plaintiffs upon the defendant - Gram Panchayat, thus, the suit was barred by law. In reply to the application, the plaintiffs submitted that since no relief was claimed against the Gram Panchayat, hence, it was not necessary to give any notice before filing the suit against the Gram Panchayat. After hearing the parties, the trial court rejected the said application vide Order dated 28.07.2021 on the ground that no relief was claimed against the Gram Panchayat, hence, it was not necessary for the plaintiffs to give notice under Section 109 of the Act of 1994 to the Gram Panchayat before filing the suit. Aggrieved with the above order of the trial court rejecting the application under Order VII, Rule 11 (d) of C.P.C., this revision petition has been filed.

Heard learned counsel for the parties and perused the material available on record.

After perusal of the record, it reveals that though, no relief has been claimed by the plaintiffs against the Gram Panchayat, however, after going through the averments made in the application filed under Order VII, Rule 11 (d) of C.P.C., it cannot be said that the Gram Panchayat is not a necessary party in the suit proceedings. In the application, it has been stated that the Gram Panchayat decided to construct the Panchayat Bhawan on the land in question for which, sanction was also granted by the Panchayati Raj Department. It has been further averred in the application that after coming to know about said sanction, this collusive suit has been filed by the plaintiffs without giving any notice to the Gram Panchayat under Section 109 of the Act of 1994.

It is well settled proposition of law that the suit against the Gram Panchayat cannot be filed without giving notice of 60 days under Section 109 of the Act of 1994. The trial court has erred in rejecting the application filed under Order VII, Rule 11 (d) of C.P.C. without considering the fact that the Gram Panchayat has asserted its right on the land in question. The trial court has not dealt with the points raised by the petitioner-defendant No. 5 Gram Panchayat in the application under Order VII, Rule 11 (d) of C.P.C. and held that since no relief was claimed against the Gram Panchayat, hence, the Gram Panchayat was not a necessary party. The plaintiffs themselves have made Gram Panchayat as defendant No. 5 terming it as necessary party. It is immaterial that any relief against the Gram Panchayat is sought for or not. In the considered opinion of

this Court, if interest of any party may be adversely affected by passing of any order or decree in a suit proceedings, then that party is necessary party even though, no relief has been claimed against that party. As per provisions of Order VII, Rule 11 (d) of C.P.C., the plaint shall be rejected when the suit appears from the statement in the plaint to be barred by any law. In the present case, the Gram Panchayat has been made party without giving previous notice of two months under Section 109 of the Act of 1994. Hence, the suit is not maintainable. The Gram Panchayat seems to be necessary party and without impleading the Gram Panchayat, suit against the defendant Nos. 1 to 4 alone cannot be continued.

In view of the above factual legal position, impugned Order dated 28.07.2021 passed by the trial court is liable to be set aside.

In the result, the present civil revision petition is allowed. The impugned Order dated 28.07.2021 passed by the trial court is set aside and it is held that the suit filed by the plaintiffs-respondent Nos. 1 to 4 is not maintainable.