
(2012) 01 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil Writ Petition No. 11809 of 2011

Jai Narayan and Others

APPELLANT

Vs

Jeev Raj and Others

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 2(4), Order 18 Rule 3

Citation : (2012) 1 WLN 538

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—Having heard the learned counsel for the parties and having perused the material placed on record, this Court is unable to find any jurisdictional error in the impugned order dt. 21.10.2011 whereby the learned Trial Court, dealing with the suit for specific performance has declined the prayer made by the plaintiffs petitioners for an opportunity to lead evidence in rebuttal.

2. The learned Trial Court has precisely observed that the plaintiffs-petitioners did not reserve their right of leading evidence in rebuttal before the defendants entered in evidence and in that position, the right could not be acceded to the petitioners for leading evidence in rebuttal.

3. The learned counsel for the petitioners has referred to and relied upon the decision of this Court in Gad Singh & Ors. vs. Phool Chand & Anr., 1997 DNJ (Raj.) 567 to submit that even when the right of rebuttal evidence had not been reserved, opportunity could be extended. The learned counsel has also referred to the decision of this Court in L.M.P. Precession Engineering Company(P) Ltd. vs. Ram Narayan, 2004 (2) RLW 712.

4. In L.M.P. Precession (supra), this Court held that the plaintiff shall have right of leading evidence in rebuttal if earlier he has led evidence touching his case only. This decision has no bearing on the question involved herein. In the present

case, the plaintiffs have been declined the permission for leading rebuttal evidence for the reason that they failed to reserve such a right at the relevant stage.

5. The decision in *Gad Singh* (supra) does not help the case of the petitioners because therein, the Court referred to sub-rule (4) of Rule 2 of Order XVIII of the CPC then existing, as inserted by way of amendment in the year 1976. Indisputably, sub-rule (4) of Rule 2 of Order XVIII has since been omitted from the statute by the Amendment Act of 1999. That being the position, the principles as available from the decision of this Court in *Inderjeet Singh vs. Maharaj Raghunath Singh & Ors.*, AIR 1970 Rajasthan 278 directly operate and apply regarding exercise of option under Rule 3 of Order XVIII CPC of leading evidence in rebuttal that such right ought to be reserved before the other party begins its evidence. The petitioners having not done so, the order rejecting their application seeking permission to lead evidence in rebuttal cannot be said to be suffering from any jurisdictional error so as to warrant interference by this Court.

6. In the last, the learned counsel for the plaintiffs-petitioners submits that the petitioners may be permitted to take the ground in appeal in relation to the order impugned. The learned counsel for the respondents frankly submits that in appeal, the petitioners may take such grounds as permissible in accordance with law. It goes without saying that the petitioners are free to raise the grounds in appeal as permissible in law. So far the order impugned is concerned, this Court finds no reason to interfere as it does not appear suffering from any jurisdictional error.

With the observations foregoing, this petition stands dismissed.