
(2011) 08 RAJ CK 0092

In the Rajasthan High Court

Case No : Civil Miscellaneous Stay Application No. 90 of 2010

Kishan Chand

APPELLANT

Vs

Sanjay Bijawat and Another

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 227

Citation : (2011) 08 RAJ CK 0092

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—By way of the instant writ petition, the Petitioner has impugned the order dated 5th December, 2009, whereby the learned Additional District Judge, No. 2, Ajmer, dismissed the Petitioner's application filed under Order 1 Rule 10 of CPC, wherein he prayed to implead him as party Defendant.

2. Having considered the submissions made by the learned Counsel for the Petitioner and carefully perused the relevant provisions of law as also the impugned order, it is noticed that the Respondent Plaintiff filed a suit for permanent injunction against the Defendants before the learned trial court. During the pendency of the suit, the Petitioner-applicant Kishan Chand Lakhyan filed an application under Order 1 Rule 10 of CPC imploring the court to implead him as party Defendant in the suit on the ground that he was also a partner of the disputed firm and Defendant Ramesh Chand entered into an agreement to sell the partnership property sans there being any right to sell the same. The learned trial court after considering the rival submissions made by the parties dismissed the application filed under Order 1 Rule 10 of CPC on the ground that the applicant was free to decide the issue of partnership with Ramesh Chand separately. Learned trial court is found to have rightly dismissed the application filed by the Petitioner under Order 1 Rule 10 of CPC and the findings of the

learned trial court are based on pure findings of the facts. The impugned order is found to have suffered from no infirmity and the writ petition deserves to be dismissed.

3. Jurisdiction under Article 227 of the Constitution cannot be exercised just with a view to upset the pure findings of facts. The extraordinary jurisdiction under Article 227 can be invoked only when the impugned order is found to be totally perverse or contrary to material or it results in manifesting injustice.

4. In view of above, the writ petition being bereft of any merits deserves to be dismissed and the same stands dismissed, accordingly.

5. Consequent upon the dismissal of the writ petition, the stay application does not survive and the same also stands dismissed.