

(2024) 04 RAJ CK 0116
In the Rajasthan High Court
Case No : Civil Revision Petition No. 134 Of 2022

Kishan Lal

APPELLANT

Vs

Vardishankar And Others

RESPONDENT

Date of Decision : 24-04-2024

Acts Referred:

Code Of Civil Procedure, 1908 — Order 7 Rule 11
Rajasthan Panchayati Raj Act, 1994 — Section 109

Citation : (2024) 04 RAJ CK 0116

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Nayab Khan

Final Decision : Dismissed

Judgement

Birendra Kumar, J

1. Respondent No.1 Vardishankar brought a suit against the petitioner as well as against the Gram Panchayat, Dhanetkalan, wherein, respondent No.1 sought for relief of permanent injunction against the petitioner prohibiting the petitioner to not to open his door in front of the door of the plaintiff-respondent nor to put any door panel thereat and the petitioner be directed to close the said place, which was opened for constructing a door thereat.

2. The petitioner filed an application for rejection of plaint under Order VII Rule 11 CPC. Vide impugned order dated 29.01.2020, passed in Civil Case No.43/2019, the learned court below has refused to reject the plaint.

3. Main contention of the petitioner is that the Gram Panchayat is also a party to the suit and under Section 109 of the Rajasthan Panchayati Raj Act, 1994, two months prior notice is required to be given to the Panchayat before institution of the suit. Since the provision of Section 109 is mandatory, its non-compliance makes the plaint incompetent. Learned counsel has placed reliance on a judgment of this Court in "Baldev Singh Vs. Guddi Devi & Ors." reported in 2012

(2) RRT 1271.

4. The provisions of Section 109 of the Rajasthan Panchayati Raj Act, 1994 is are being reproduced below:-

"109. Suits etc. against Panchayat, Panchayat Samiti and Zila Parishad. - (1) No suit or other civil proceedings against a Panchayati Raj Institution or against any member, officer or servant thereof or against any persons acting under the direction of a Panchayati Raj Institution or any member, officer or servant thereof for anything done or purporting to be done under this Act in its or his official capacity:-

(a) shall be instituted until the expiration of two months, after notice in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the nature of the relief which he claims, he has been delivered or left at its office or, in the case of a member, officer, servant or person as aforesaid, delivered to him or left at the office or at his usual place of abode, and the plaint shall in each such case contain a statement that such notice has been so delivered or left, or

(b) shall be instituted, unless it is a suit for the recovery of immovable property or for a declaration title thereto, otherwise than within six months after (transfer next) the accrual of the alleged cause of action.

(2) The notice referred to in Sub-Section (1) When, it is intended for a Panchayat, Panchayat Samiti or a Zila Parishad shall be addressed to the Sarpanch, Vikas Adhikari or the Chief Executive Officer respectively."

5. Evidently, when relief is sought for against the Panchayat, the notice is mandatory whereas in the case on hand relief has been sought for against a private individual. Gram Panchayat is a formal party against whom no relief in the plaint is sought for. Hence, it cannot be argued that the plaint is incompetent and not maintainable. Moreover, Gram Panchayat has not challenged the maintainability of the suit without notice.

6. Therefore, this court is not inclined to interfere with the impugned order. Accordingly, this civil revision petition stands dismissed.