
(2012) 01 RAJ CK 0078
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12500 of 2011

LRs. of Brijlal

APPELLANT

Vs

Jagdish Prasad and Others

RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 5

Citation : AIR 2012 Raj 91

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Advocate : A.K. Rajvashy, for the Appellant;

Judgement

Dinesh Maheshwari, J.—Heard the learned counsel for the petitioner and perused the material placed on record. In relation to the premises situated at Hanumangarh Town and leased out for commercial purpose, the plaintiffs-respondents Nos. 1 to 5 filed a suit for eviction, inter alia, on the ground of second default in payment of rent while alleging that the suit premises were initially taken on rent by late Shri Chunilal and later, his son, the defendant No. 1 Shri Brijlal, had been carrying on business therein as the tenant. The learned Trial Court, after taking evidence and hearing the parties, proceeded to decree the suit by its judgment and decree dated 21.11.2001.

2. The defendant No. 1 Brijlal preferred an appeal against the judgment and decree so passed by the learned Trial Court. However, it appears that the possession of the suit premises was handed over to the landlord on 18.02.2002 in execution of the original decree. Then, the defendant-appellant Brijlal expired on 07.04.2005. An application came to be moved by the present petitioners before the learned Appellate Court on 04.06.2005 seeking their substitution in appeal as appellants with the submissions that they were the heirs of the deceased appellant Brijlal. The contents of the application read as under:-

(Vernacular matter omitted...Ed.)

3. The plaintiffs-respondents put the application to contention with the submissions that the premises in question were leased out for commercial purposes and hence, only such person could be taken on record as the legal representative of the deceased-tenant who had been carrying on business as a member of his family in the suit premises. It was submitted that the possession of the suit premises had already been handed over on 18.02.2002 and, therefore, there was no question of any of the applicants carrying on business in the suit premises as tenant with the deceased tenant.

4. The learned Appellate Court by its impugned order dated 11.11.2011 rejected the application for substitution, inter alia, with the consideration that the possession of the suit premises had admittedly been handed over to the plaintiffs even before the demise of Brijlal and that the applicants had not stated if they were involved in the business with late Shri Brijlal or that they were carrying on business in the suit premises with him. Thus, the learned Appellate Court concluded" that right to sue did not survive to the applicants and they were not entitled to be substituted as legal representatives of the appellant. The learned Appellate Court proceeded to reject the application, inter alia, with the following observations and findings: -

(Vernacular matter omitted...Ed.)

5. Seeking to assail the order aforesaid, the learned counsel for the petitioner strenuously contended that when the plaintiffs-respondents alleged that the applicants were not the legal representatives of the appellant, such a question obviously required determination and ought to have been taken up for determination by the learned Appellate Court per Rule 5 of Order XXII of the Code of Civil Procedure. The learned counsel submitted that the possession of the suit premises had been handed over in execution of the decree in question and appellant himself was not in possession of the suit premises at the time of his death and, therefore, there was no occasion for the applicants to plead that they were carrying on business in the suit premises at the time of death of the tenant. The teamed counsel also submitted that decree in question has been for arrears of rent too and, therefore, substitution is necessary.

6. After having given thoughtful consideration to the submissions made by the learned counsel for the petitioner and having examined the record with reference to the law applicable, this Court is not persuaded to consider interference in this matter.

7. The contents of the application moved by the petitioners on 04.06.2005 have been noticed hereinbefore and apparent it is that not even a whisper was made in the said application if the applicants or any of them had been or ever carried on business in the suit premises as a member of family with the ten-, ant. The factor put forward for consideration by the respondents and, of course, taken for observations by the learned Appellate Court about the possession having been handed over carries a little relevance in the light of the fact that the applicants

themselves chose not to state even remotely that all or any of them had ever carried on business in the suit, premises with the deceased tenant Brijlal. Apparent it is that right to sue could survive in relation to the litigation of the present nature only to the person who could be said to be answering the description of tenant per sub-clause (b) of clause (vii) of Section 3 of, the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 ["the Act of 1950"].

8. In the aforesaid position, when there had not been even an indication in the application whereby it could be taken up for consideration if right to sue at all survived to the applicants or any of them, there was no occasion for the learned Appellate Court to enter into and determine any question per Rule 5 of Order XXII CPC. It may, in the passing, be observed that Rule 5 of Order XXII CPC deals with an eventuality different where the question arises as to whether any particular person is or is not the legal representative of the deceased. So far the petitioners are concerned, even if their relation with the deceased appellant is not doubted, as aforesaid, they have not even remotely indicated in the application if they answer to the requisite description per Section 3(vii)(b) of the Act of 1950. Mere raising of some objection by the respondents in the reply or making of some observation by the learned Appellate Court in its impugned order do not take away the substance of the matter that the application had been lacking in material particulars and could not have been allowed.

9. The learned Appellate Court cannot be said to have committed any jurisdictional error in passing the order impugned. The petition fails and is, therefore, dismissed summarily.