
(2016) 02 RAJ CK 0089

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2856 of 2014.

LRs of Late Shri Mahesh Kumar

APPELLANT

Vs

Hanuman Prasad Goyal

RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2016) 2 DNJ 617 : (2016) 1 WLCRajUC 683

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : M.M. Dhera, Advocate, for the Appellant; B.K. Bhatnagar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J. - This writ petition under Article 227 of the Constitution of India has been filed by the petitioners aggrieved against the order dated 28.02.2014 passed by the Civil Judge (Junior Division), Abu Road, whereby the application filed by the petitioners-defendants under Order 6, Rule 17 CPC has been rejected by the trial court.

2. The respondent-plaintiff filed a suit against Mahesh Kumar in the year 2005 for vacating the shop in question; the suit was filed based on termination of tenancy under Section 106 of the Transfer of Property Act, 1882. Written statement was filed by Mahesh Kumar, inter alia, raising several disputes including the dispute that plaintiff has not impleaded all the legal representatives of original tenant Shri Prabhudayal, in whose absence, the suit was liable to be dismissed.

3. Based on the submissions of the parties, the trial court framed issues on 27.11.2008, which were amended on 14.05.2009, 01.02.2011 and 21.04.2011. The material issues presently are whether the defendant is tenant of the plaintiff, whether the tenancy has been validly terminated and whether in absence of all

the legal representatives of defendant's father, the suit was not maintainable.

4. On the issues so framed, statements on behalf of the plaintiff were recorded. During pendency of the suit, the sole defendant Mahesh Kumar expired on 29.10.2006 and the present petitioners, who are wife and children of the deceased Mahesh Kumar were brought on record.

5. It appears that during the pendency of the suit, a registered notice dated 30.09.2013 was sent by counsel for the respondent to the petitioners, inter alia, indicating that a sum of Rs. 1,00,800/- was outstanding. In response, the counsel for the petitioners by letter dated 11.10.2013, sent a cheque of Rs. 27,036/- to the respondent, to which, again a response was sent by counsel for the plaintiff indicating that the balance sum of Rs. 73,764/- be sent. Where after, a notice dated 23.11.2013 was sent by counsel Mr. G.P. Rakhechha on behalf of the petitioners as well one Vishnu, Narayan and Munnalal sons of Prabhudayal, inter alia, sending a further sum of Rs. 11,265/-. The said notice/amount was refused by the plaintiff by letter dated 05.12.2013 indicating that the amount was sent on behalf of the seven persons named in the notice and as there is no landlord-tenant relationship between the said persons and the defendant, the amount is being returned.

6. Based on the said response of the plaintiff, present application under Order 6, Rule 17 CPC was filed, inter alia, seeking amendment in the written statement so as to take a plea that the plaintiff has denied the landlord-tenant relationship between the parties and, therefore, the suit was liable to be dismissed.

7. Though, no reply to the application was filed, but the same was resisted by the plaintiff-respondent. The trial Court after hearing the parties, came to the conclusion that as the issues as to whether the defendant is tenant of the plaintiff or not is still to be decided, based on the subsequent events, the amendment cannot be allowed and rejected the application.

8. It is submitted by learned counsel for the petitioners that the trial court committed error in refusing the amendment, inasmuch as, from the tenor of the response given by the plaintiff-landlord, it is apparent that the relationship of landlord-tenant has been denied during the pendency of the suit, which has got implication and, therefore, the trial court should have granted the amendment and the refusal is without any basis and, consequently, the application deserves to be accepted. It was submitted that the basis of rejection that on account of subsequent events, amendment cannot be allowed is per se illegal and the order passed by the trial court deserves to be quashed.

9. Reliance was placed on Jayanti Roy v. Dass Estates Pvt. Ltd., AIR 2002 SC 2394.

10. Learned counsel for the respondent vehemently opposed the submissions made by learned counsel for the petitioners. It was submitted that the rent of a sum of Rs. 11,265/- was mischievously sent on behalf of the petitioners as well

as three sons of late Prabhudayal, regarding which, the plaintiff and the defendants are already contesting the issue before the trial court and in those circumstances, the rent was refused by saying that there is not tenant-landlord relationship between the clients of the counsel, who sent the notice, which was justified and cannot be treated as a denial of relationship between the petitioners and the plaintiff, inasmuch as, the earlier amount of Rs. 27,036/- which was sent on behalf of the petitioners was accepted by the plaintiff. It is further submitted that an application under Order I, Rule 9 CPC read with Section 151 CPC was also filed by the petitioners, inter alia, for lack of impleadment of legal representatives of late Prabhudayal, however, the said application was dismissed by the trial court on 24.10.2013 and, therefore, it cannot be said that the plea sought to be raised by the petitioner by way of the present amendment has any basis. The application has been filed only with a view to delay the proceedings and, therefore, the writ petition deserves to be dismissed.

11. Reliance was placed on Jameel Mohd. v. Durgesh and Ors., 2014 (1) WLC (Raj.) 195; Kailash Chand v. Gyan Chand Chordia (Jain) and Anr., 2014 (2) WLC (Raj.) 480.

12. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

13. The amendment in the present proceedings has been sought based on a subsequent event, which happened on account of sending of an amount of Rs. 11,265/- by counsel for the petitioners and three sons of Prabhudayal to the plaintiff, the plaintiff refused to accept the amount and indicated that there was no landlord-tenant relationship between the parties. The said event, it is claimed is denial of landlord-tenant relationship between the plaintiff and defendants and, therefore, the suit is not maintainable and the said aspect is sought to be introduced in the pleadings by way of amendment.

14. As noticed hereinbefore, the issues between the parties, which already exit pertains to landlord-tenant relationship between the plaintiff and the petitioners and whether in absence of all the legal representatives of deceased Prabhudayal, the suit was maintainable.

15. The present amendment, which is sought, imbibes in it both the above two issues as the amount was sent by counsel to the plaintiff on behalf of the legal representatives of Prabhudayal including the petitioners as well and, therefore, once the issues are already before the trial court, the attempt by the petitioners during the pendency of the suit, by once sending the due rent on behalf of the petitioners and where after sending the same on behalf of the petitioners as well as other legal representatives of late Prabhudayal, clearly appears to be an attempt to create evidence during the pendency of the suit so as to change the existing complexion of the pleadings, which is not permissible in law.

16. The reliance placed by the counsel for the petitioners on the case of Jayanti Roy (supra), has apparently no application as the amendment therein was

sought based on discovery of additional evidence and material in relation to the circumstances as it existed on the date of filing of the suit and the said judgment does not deal with the subsequently "created events" and, therefore, has no application.

17. This Court in the case of Kailash Chand (supra), distinguishing several judgment of the Supreme Court on coming to the conclusion that the subsequent events would not have any impact on the relief claimed by the respondent declined the same.

18. In the case of Jameel Mohd. (supra), the amendment was refused as the defendant after denying landlord-tenant relationship was seeking to change his stand by claiming himself as tenant.

19. In view of the above discussion, there is no substance in the writ petition, the same is, therefore, dismissed.