
(2016) 01 RAJ CK 0116
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5126 of 2014.

LRs of Ratan Lal

APPELLANT

Vs

LRs of Sosar Bai

RESPONDENT

Date of Decision : 13-01-2016

Acts Referred:

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

Citation : (2016) 2 DNJ 530

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Sachin Acharya, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Arun Bhansali, J. - This writ petition has been filed by the petitioner aggrieved against the order dated 3.5.2014 passed by the Appellate Court, whereby the application filed by the petitioner under Order 6, Rule 17 CPC seeking amendment in the written statement has been dismissed.

2. The respondent-Sosar Bai/LRs of Sosar Bai filed a suit for eviction and arrears of rent against Ratan Lal/petitioners. The suit was decreed by the judgment and decree dated 28.4.2004.

3. During the pendency of the appeal, the petitioner filed an application under Order 6, Rule 17 CPC seeking amendment in the written statement, inter-alia, with the averments that the suit was filed by Smt. Sosar Bai for the bona fide requirement of her sons Rameshwar Lal and Badri Lal, which was disputed by the petitioners; Ratan Lal had died on 5.5.2011 and during his life time, he had filed a suit for partition against his brother Badri Lal; Rameshwar Lal is not survived by any son and on account of the subsequent developments, the requirement of the plaintiff has eclipsed and therefore, the petitioner may be permitted to amend the written statement.

4. The application was opposed by the respondent.

5. It was inter-alia submitted that the suit was filed for the requirement of Rameshwar Lal and Badri Lal, though Rameshwar Lal died during the pendency of the appeal, the requirement of Badri Lal still persist and therefore, the application is baseless. It was also submitted that filing of suit by Rameshwar Lal for partition against Badri Lal has no relation with the present dispute and therefore, the application deserves to be dismissed.

6. After hearing the parties, the learned appellate court, came to the conclusion that the averments contained in the application does not indicate any subsequent event requiring amendment in the written statement and consequently dismissed the application.

7. It is submitted by learned counsel for the petitioners that the appellate court was not justified in dismissing the application as the allegations contained in the application clearly proved that the requirement alleged in the suit stood eclipsed and therefore, the appellate court should have permitted amendment in the written statement and the order impugned deserves to be quashed and set-aside.

8. This writ petition, which was filed on 5.7.2014 has remained pending for admission for over 17 years and a perusal of the record shows that the suit for eviction was filed way-back in the year 1984, which came to be decreed on 28.4.2004 and the appeal is pending consideration before the appellate court since the year 2004, where after the application has been filed on 4.3.2014 on account of death of Ratan Lal on 5.5.2011. The manner in which the proceedings in the present suit/appeal are going on leaves a lot to be desired on part of the appellate court.

9. Admittedly, the suit was filed by Smt. Sosar Bai indicating bona fide requirement of her sons Rameshwar Lal and Badri Lal. The trial court by its judgment and decree came to the conclusion that the requirement indicated by Smt. Sosar Bai was bona fide and she would comparatively suffer more hardship in case the shop was not vacated.

10. During the pendency of the appeal, Smt. Sosar Bai died and where after her son Rameshwar Lal also died. Then the present application under Order 6, Rule 17 CPC was filed alleging that on account of death of Rameshwar Lal and the fact that he had filed suit for partition against Badri Lal, the requirement for which the suit was filed has eclipsed. It is not in dispute that the requirement indicated was that of Rameshwar Lal and Badri Lal both and merely because one of the sons of Sosar Bai died during the pendency of the appeal and as Rameshwar Lal and Badri Lal were allegedly not having good terms on account of filing of suit for partition by Rameshwar Lal against Badri Lal, it cannot be said that the requirement, for which the suit was filed would stand eclipsed as claimed.

11. In view thereof, the appellate court was justified in dismissing the application filed by the petitioners. No interference is called for in the order impugned.

12. In view of the fact that the appeal is pending before the appellate court for

over 12 years now, the appellate court is directed to hear and decide the appeal within a period of two months from the date a certified copy of this order is placed before it.

13. In view of the above discussion, the writ petition filed by the petitioner is dismissed.

14. A certified copy of this order be sent to the Court of Additional District Judge No. 1, Bhilwara by the office immediately.