

(2018) 04 RAJ CK 0108
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8860 of 2015

**Mahaveer Raj @APPELLANT@Hash Senior Civil Judge & Additional Chief
Metropolitan Magistrate**

Date of Decision : 03-04-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 1 Rule 10

Citation : (2018) 04 RAJ CK 0108

Hon'ble Judges : DR. PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : Himanshu Maheshwari, RK Thanvi, Narendra Thanvi, SG Ojha,
Rajesh Choudhary

Final Decision : Allowed

Judgement

1. The petitioner has preferred this writ petition for the following reliefs :-

â??(i) by an appropriate writ, order or direction,Â the impugned order dated 05.08.2015 (Exhibit 6) passed by the Senior Civil Judge & Additional

Chief Judicial Magistrate No.6, Jodhpur Metro, Jodhpur in Civil Suit No.04/2015 (old No.37/2011) titled as Premraj Vs. JDA & Ors may kindly be

quashed and set aside. (ii) by an appropriate writ, order or direction,Â the application (Exhibit 4) filed by the petitioner may kindly be allowed in toto.

(iv) Any other appropriate writ, order or direction which thisHon`ble Court deems just and proper may kindly be passed in favour of the petitioner.â??

(v) writ petition filed by the petitioner may kindly be allowedwith costs.â??

2. Brief facts, as noticed by this Court are that the private respondent no.2 filed a suit before the learned civil court in the year 1987 and sought

permanent injunction on the ground that the disputed land was a part of his shop and the municipality was depriving him of the said land. The petitioner

is also having a shop nearby and claims that the area in-question is a common

area between both the shops, therefore, the suit was having a direct bearing upon rights of petitioner, thus, he needs to be impleaded as a party to the suit. The petitioner was impleaded as a party on 12.5.1987 by the learned court below, but the said suit was withdrawn by respondent no.2 on 17.02.1994 and he preferred another suit in the year 2003. The Municipal Corporation, Jodhpur moved an application for allowing the petitioner to become a party on account of he being a necessary party but the same was dismissed by learned court below on the ground that petitioner Mahaveer Raj has himself not come and is not claiming himself affected regarding the land in-question, therefore, application of Municipal Corporation for impleading the petitioner as party was rejected. The same was challenged and the impugned order was affirmed by this Court on 27.4.2015 in S.B. Civil Writ Petition No.3474/2015 (Municipal Corporation, Jodhpur Vs. Premraj & Anr.), the relevant portion of the order reads as follows :

“I have considered the submissions made by learned counsel for the parties and have perused the material placed on record. The foundation of the application filed by the petitioner is that the said Mahaveer Raj was a party to the earlier suit. The very fact that after the disposal of the earlier suit, the plaintiff has filed another suit, necessarily means that the plaintiff has come out with a fresh cause of action and it is not necessary that in a fresh cause of action, which may be pertaining to the same property regarding which the earlier suit was filed, any relief is being sought against Mahaveer Raj and therefore, if in the opinion of the plaintiff presence of Mahaveer Raj was not necessary for effectual or complete adjudication of all the questions involved in the suit; the plaintiff choose not to implead him as a party; no objection in this regard was taken by the petitioner in the written statement; the application was filed at the fag end of the trial after seeking several adjournments for making final arguments, it cannot be said that the trial court was not justified in dismissing the application filed by the petitioner on coming to the conclusion that the presence of said Mahaveer Raj was not necessary for the effectual disposal of the suit. In that view of the matter, no case for interference is made out. The writ petition filed by the petitioner is dismissed.”

The petitioner thereafter moved an application on his own behalf under Order 1 Rule 10 CPC for being impleaded as a party, which was dismissed by

the learned trial court on 05.8.2015 (Annex.6), hence, this writ petition.

3. Learned counsel for the petitioner states that once the land in-question for which relief was being sought is a common land between his shop and

the shop of respondent no.2, therefore, adjudication of the matter could not have been made without making him a necessary party. Counsel for the

petitioner further stated that in the previous suit, that was filed for almost similar prayer, the impleadment of petitioner as party was allowed. Counsel

for the petitioner further states that the premises on which this Court passed order on 27.4.2015 was that the petitioner himself was not interested to

become party, thus, he being not affected was not a necessary party, thus, the party impleadment application moved by Municipal Corporation could

not be permitted.

4. Learned counsel for the respondent vehemently opposed the submission stating that this Court has already decided it conclusively that the petitioner

was neither a necessary party nor was required to be made a party, thus, justified passing of order impugned (Annex.6).

5. After hearing learned counsel for the parties, this Court is of the opinion that the earlier order passed by this Court was on a premise that the

petitioner himself was not willing to lay claim on disputed property and was not interested to become a party, thus, this Court recorded this fact in its

order dated 27.4.2015 and dismissed the writ petition. The petitioner was not their earlier before this Court and the order upholding also moves on the

premise that Mahaveer Raj the petitioner had not come himself before the Court to claim his interest in the property inquestion, thus, the previous

adjudication on behalf of the Municipal Corporation denying the petitioner to become a party was justified. However, failure of Municipal Corporation

in impleadment proceedings of Mahaveer Raj cannot prejudice the cause being taken by Mahaveer Raj himself as both stand on different pedestals of

touchstone to be adjudged by the courts. Particularly when the land in-question is claimed by the respondent no.2 to be between the shop of the

petitioner and the respondent no.2 himself and the petitioner has a direct interest, this Court finds that the common property, which is being adjudicated

upon requires the petitioner to be a party at the instance of Mahaveer Raj himself, hence, the writ petition is allowed. The order dated 05.8.2015

(Annex.6) is quashed and set aside and the learned trial court is directed to

implead the petitioner as a party.Â Further, the learned trial court shall be required to expedite the trial.