
(2012) 09 RAJ CK 0077
In the Rajasthan High Court
Case No : Civil Writ Petition No. 936 of 2012

Major Singh and Others

APPELLANT

Vs

Civil Judge (S.D.), Hanumangarh and Others

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 39 Rule 1, Order 39 Rule 2

Citation : (2012) 4 WLN 23

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : R.K. Singhal, for the Appellant; Vijay Jain and Mr. L.K. Purohit, for the Respondent

Judgement

Gopal Krishan Vyas, J.—The instant writ petition has been filed by the petitioners for quashing the order dt. 12.01.2012 (Annexure-12), whereby, the application filed under Order 1 Rule 10 CPC by the petitioners in the Court of Civil Judge (Senior Division), Hanumangarh in Civil Suit No. 46/ 2011 was rejected. Learned counsel for the petitioners submits that a suit for declaration and injunction was filed by the respondent-plaintiffs in relation to the orders dt. 05.10.2011 and 11.10.2011 passed by the irrigation authorities in the Court of Civil Judge (Senior Division), Hanumangarh. Alongwith suit an application under Order 39 Rule 1 and 2 CPC for granting temporary injunction was also filed.

2. The petitioners moved two applications under Order 1 Rule 10 CPC for impleading them as defendants in the suit. The second application was filed in the temporary injunction application also for impleading them as party.

3. The trial Court after hearing both the parties, rejected both the applications filed by the petitioners under Order 1 Rule 10 CPC as well as temporary injunction application filed in the suit.

4. Learned counsel for the petitioners vehemently argued that the orders impugned are totally illegal because the impugned orders, which are challenged

in the suit dt. 05.10.2011 and 11.10.2011 were filed by the irrigation authorities upon the objections raised by the petitioners/therefore, petitioners were necessary party, but the trial Court rejected both the applications in a very casual manner and without even considering the important fact that action has been taken by the irrigation authorities upon the complaint and application filed by the petitioners.

5. Learned counsel for the respondents submits that no error has been committed by the trial Court in passing the impugned order because petitioners are not aggrieved persons because no relief has been sought against them by the respondent-plaintiffs, therefore, the orders impugned are perfectly justified.

6. Learned counsel appearing on behalf of State while inviting attention of this Court towards the fact that there is no error in the order impugned, therefore, this writ petition may be dismissed.

7. After hearing learned counsel for the parties, I have perused entire record of the case.

8. In ground No. 1 of the writ petition, it is specifically pleaded by the petitioners that irrigation authorities passed the impugned orders dt. 05.10.2011 and 11.10.2011 on the objections raised by the petitioners, therefore, the petitioners are directly affected parties in the litigation initiated by the respondent-plaintiffs because any order passed by the Civil Court will adversely affect the interest of the petitioners.

9. In reply to ground No. 1 of the writ petition, it is specifically stated by the respondents that petitioner No. 4 filed an application before answering respondent on 20.12.2010 to avoid damage to constructed pucca water course near Sq. No. 175/35 Killa No.1, 10, 11, 20 and 21 by cultivators of these Killa, due to construction of kachcha water course adjacent to pucca water course. The Department after complete inquiry issued final notice on 12.05.2011 to the cultivators to present their case and after providing opportunity of hearing passed an order on 30.05.2011 and that order was challenged before the Superintending Engineer, and the Superintending Engineer remanded the matter by order dt. 26.05.2012.

10. Meaning thereby the cause of action in the civil suit was arose upon the proceedings initiated upon the applications filed by the petitioner No. 4 and in this writ petition, the respondents give following reply to the ground No. 2 which reads as under:-

ii. That the averments contained in ground (ii) of the writ petition are not admitted and hence denied. It is wrong to say that learned trial Court has acceded its jurisdiction vested in it and committed jurisdictional error. It is true that petitioners are necessary party because petitioners has informed department with regard to illegal act of cultivators. Copy of the application dt. 20.12.2010 is filed herewith and marked as Annex.R/2.

11. Meaning thereby, the respondent-plaintiffs after losing his case before the irrigation department preferred a suit before the Civil Court, in which, the petitioners prayed for impleading them as party, therefore, it cannot be said that petitioners are not affected party in the suit.

12. It is admitted by the State in their reply that cause of action for which suit has been filed by the respondent-plaintiffs was arose upon applications filed by the petitioner-applicants, therefore, they are necessary party. In view of above, the order dt. 12.01.2012 (Annexure-12) passed upon application filed under Order 1 Rule 10 CPC is hereby quashed and applications filed by the petitioners in the suit are hereby allowed. The trial Court is directed to implead petitioners as party in the suit as well as in the temporary injunction application.

The writ petition is disposed of in above terms.