

(2013) 01 RAJ CK 0091
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12879 of 2012

Mohammed Farook and Another	Vs	APPELLANT
Smt. Suraj Kanwar and Others		RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 226, 227

Citation : (2013) 2 CDR 772

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : M.A. Siddiqui, for the Appellant; R.S. Mankad, for the Respondent

Judgement

Gopal Krishan Vyas, J.—Heard learned counsel for the parties. In this writ petition filed under Arts. 226 and 227 of the Constitution of India, the petitioners are challenging validity of the order dt. 05.11.2012, by which, the trial Court rejected their application filed under Order 1 Rule 10 CPC in a suit filed by the respondent-defendants against their brother Haji Mohammed.

2. Learned counsel for the petitioners submits that initially the shop in question was rented out of their father Shri Gafoor Ji and after his death all the three sons including Haji Mohammed were pursuing their business on the said premises and this fact was brought to the notice of trial Court in the reply filed by the defendant Haji Mohammed. Thereafter, a rejoinder was filed by the respondent-plaintiffs, in which, the said fact was refuted.

3. Learned counsel for the petitioners further submits that being legal successors of late Gafoor Ji all the three sons were pursuing business in the shop in question, therefore, the suit was to be filed against all the three sons of late Gafoor ji, but respondent-plaintiffs preferred the suit for eviction only against Haji Mohammed and not against the applicant, therefore, it is felt necessary by the applicant to file an application under Order 1 Rule 10 CPC, but learned trial Court rejected the said application on illegal ground that they did not appear

before the Court as witnesses, therefore, they are not necessary party in the suit.

4. It is also argued by the counsel for petitioners that the grounds upon which the application has been rejected are not tenable for the simple reason that the fact of pursuing business by the petitioners alongwith Haji Mohammed was already brought to the notice to the trial Court, but the trial Court did not consider the said fact while deciding the application filed by the petitioners under Order 1 Rule 10 CPC, therefore, the order impugned may be quashed.

5. Learned counsel for the respondent-plaintiffs argued that the contention of petitioner is totally false that they are pursuing business alongwith Haji Mohammed and in the trial they were not produced as witnesses and no objections were raised by them during trial, therefore, at the final stage there was no question for the petitioners to file an application for impleading them as party, therefore, trial Court rejected their application upon totality of the facts, therefore, the impugned order does not suffer from any illegality or perversity.

6. Further, it is argued that the order is in consonance with law, therefore, it is totally wrong to say that they were pursuing business with Haji Mohammed after death of Gafoor therefore, this writ petition may be dismissed.

7. After hearing learned counsel for the parties, I have perused para 2 of the written statement, in which, a specific averment has been made by the respondent Haji Mohammed that originally his father Gafoor Ji was tenant of the shop in question and after his death he and his brothers are pursuing the business, but inspite of the said fact, the respondent-plaintiff did not implead the applicants as a party, therefore, in compelling circumstances when the Court was adjudicating the suit, it was felt necessary by the petitioners to file an application to implead them as party. It is true that suit is at final stage, but it is also true that fact of pursuing business by the applicants was brought to the notice of the Court by the original defendant Haji Mohammed, but while deciding application filed under Order 1 Rule 10 CPC trial Court has failed to consider the fact that in the written statement son of original tenant narrated the fact that being son of Gafoor the applicants are also pursuing business in the same shop.

8. In view of above, learned counsel for the petitioners submits that if this Court is not inclined to interfere in the order impugned, then it may be observed in the order that this order will not come in the way of filing objections by the applicants at the time of execution of the judgment and decree that they are in possession. In the opinion of this Court, the prayer of learned counsel for the petitioners is genuine because trial Court has rejected their application filed under Order 1 Rule 10 CPC inspite of the fact that the original defendant Haji Mohammed has expressly stated in para 2 of the written statement that his two brothers are also pursuing business, therefore, this writ petition is disposed of with the directions that dismissal of the application of the petitioner-applicants vide impugned order dt. 05.11.2012 by the trial Court will not come in their way at the time of raising objection at the time of execution of the Judgment and

decree if any passed against Haji Mohammed.