
(2010) 02 RAJ CK 0021
In the Rajasthan High Court

Mohd. Hanif Another

APPELLANT

Vs

L.Rs. of Usman Gani and Others

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2010) 1 WLN 626

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Judgement

Vineet Kothari, J.—This writ petition is directed against the order dtd. 9.2.2009 (Annex.9) passed by the learned trial Court rejecting the defendant - petitioner's application u/s 151 C.P.C. by which the defendant petitioner had objected to the affidavit filed by the plaintiff in rebuttal evidence along with the fresh documents in the suit for possession filed by him.

2. Mr. G.R. Singhvi, learned Counsel for the petitioners - defendants urged that during the course of rebuttal evidence, the plaintiffs - respondents cannot be permitted to introduce new documents and also cannot be allowed to prove the documents filed in the course of defendants' evidence for confronting him for limited purpose.

3. On the other hand Mr. Deepak Parihar, learned Counsel for the respondents submitted that the impugned order does not deserve to be interfered with under Article 227 of the Constitution of India because the defendants - petitioners have been allowed the opportunity of cross-examination by the learned trial Court. Therefore, the plaintiffs - respondents had been allowed to file said affidavit in rebuttal evidence.

4. Having heard the learned Counsels, this Court is of the view that the plaintiffs - respondents cannot be permitted to introduce any fresh and new document at the stage of rebuttal evidence and therefore, the documents filed with the affidavit in the course of rebuttal evidence will not be taken on record and will be

struck off from the record. However, for the affidavit filed by the plaintiff - respondent in the course of rebuttal evidence, since the petitioners - defendants has right to cross-examination during the course of rebuttal evidence, it cannot be said that the plaintiffs - respondents cannot file said affidavit in the course of rebuttal evidence. The objections if any, regarding the documents filed during the course of rebuttal evidence for confrontation will be open to be raised during the course of final hearing of the suit itself and subject to further appeal if any.

5. With these observations, this writ petition is disposed of No Order as to Costs.