

(2013) 01 RAJ CK 0199
In the Rajasthan High Court
Case No : Civil Writ Petition No. 742 of 2013

Nathu Lal and Others

APPELLANT

Vs

Asha Ram and Others

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 8

Citation : (2013) 1 WLN 421

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Sanjay Nahar, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—The present writ petition has been filed by the defendants aggrieved by the order dt. 19.10.2012 passed by the learned trial Court, whereby, application filed by them under Order I Rule 10 CPC for impleading Charbhuja Mandir Trust and Assistant Commissioner, Devasthan Department as party defendants was rejected. The brief facts of the case are that the plaintiff-respondents filed a suit for declaration and permanent injunction with the prayer for declaration that they are the only authorised Pujaries of the temple Charbhuja Ji and are also entitled to receive all the donations offered by the devotees. The suit was filed on 05.01.1979. The petitioners alongwith other codefendants filed their written statement on 04.04.1980 disputing the averments made in the plaint and claimed that they were managing affairs of the temple from the time immemorial and the Trust was constituted on 16.10.1978 and trust deed was executed on 16.12.1978 and the same was got registered with the Sub Registrar, Kotadi.

2. It is after a lapse of 32 years that on 31.07.2012 when after completion of evidence by the plaintiffs and when DW-2 was to be cross-examined, the present application under Order I Rule 10 CPC was filed seeking impleadment of the Trust-the Charbhuja Mandir Trust, Kotadi and State of Rajasthan through

Assistant Commissioner Devasthan Department, Udaipur as party defendants. It was stated that in the written statement the fact about formation of the Trust was mentioned and that the registration certificate under the Rajasthan Public Trust Act, 1959 has been issued on 24.11.1986, therefore, the Trust as well as Devasthan Department are necessary parties and, therefore, they may be impleaded as party defendants.

3. A reply to the said application was filed by the plaintiffs opposing the said application. It was inter alia submitted that the application has been filed with too much delay and the suit was filed after complying with the directions of Order I Rule 8 CPC and, therefore, it was open for the said Trust and/or the Devasthan Department to get themselves impleaded as a party.

4. Having failing to do so, now it is not open for the defendants to get them impleaded as party defendants to the suit.

5. The trial Court essentially in view of the delay in moving the application has dismissed the application for impleadment.

6. I have heard learned counsel for the petitioners and has perused the material placed on record.

7. It is apparent from the averments made in the written statement that the Trust existed w.e.f. 16.12.1978 from before filing of the suit on 05.09.1979 and averments in this regard were made by the petitioners in their written statement filed way back on 04.04.1980. The petitioners have failed to point out any reason, much less, a cogent reason for remaining silent for over 32 years in moving the said application and doing the same at almost the fag end of the trial which has spanned over a period of 32 years. It is also pointed out by learned counsel for the petitioners that the issue regarding non-impleadment of necessary party has also been framed in the suit. The said issue would be decided by the Court and the effect of absence of so called necessary parties would be examined therein. In that view of the matter whereby the application under Order I Rule 10 CPC has been filed after an inordinate delay of 32 years for no apparent reason, this Court is not inclined to interfere in the matter and consequently, the writ petition is dismissed in limine.