
(1994) 09 RAJ CK 0034
In the Rajasthan High Court
Case No : C.R.P. No. 879 of 1994

Nijamuddin

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-09-1994

Acts Referred:

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

Citation : (1995) 1 RLW 55

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : J.R. Patel, for the Appellant;

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—This revision petition is directed against the order dated 2.6.94 passed by the learned Munsif and Judicial Magistrate, Bilara in Civil Original Suit No. 20/94, whereby the learned Munsif and Judicial Magistrate rejected the application moved under Order 1 Rule 10, CPC by defendant - petitioner Nizamudeen and defendant Govind Ram.

2. Mr J.R. Patel, Learned Counsel for the petitioner submitted that the plaintiff Sardul Singh has not impleaded Misri Lal as a party to the suit, who is a necessary party and the question involved in the suit could not be effectively adjudicated in the absence of Mishri Lal, therefore, the learned Munsif and Judicial Magistrate should not have rejected the application filed under Order 1 Rule 10, CPC by defendants named above. The aforesaid argument of Learned Counsel for the petitioner is wholly mis- conceived. In my opinion, whenever a suit is filed, it is absolute choice of the plaintiff to seek relief against a particular person or persons. The absolute choice of the plaintiff to seek relief against a particular person or persons cannot be allowed to be curtailed at the behest of the defendant or defendants, as suggested in case in hand.

3. Secondly, the present petitioner being defendant in the suit, has no locus

standi to file the present revision against the rejection of application under Order 1 Rule 10 CPC passed by Court below.

4. Thirdly, against the impugned order passed by Court below, no revision petition is maintainable under the proviso to amended sub-sec.(I) of Section 115 CPC according to which this Court shall not vary or reverse any order made or any order deciding the issue in the course of the suit or other proceeding except when it is satisfied that the order which has been made in favour of the party applying for the revision would have finally disposed of the suit or other proceeding and if the order is allowed to stand, would occasion a failure of justice or cause irreparable loss to the party against whom it was made. Nothing has been brought to my notice that any of the conditions precedent for exercise of revision jurisdiction under amended proviso to sub- sec(I) of Section 115, CPC are satisfied in the present case. Therefore, in my considered opinion, the present revision itself is not maintainable and is liable to be dismissed on this ground alone, without further ceremony.

5. Instead of meeting the preliminary objections about the locus standi of the defendant-petitioner to file the present revision and about the maintainability of revision, the Learned Counsel for the petitioner, on wholly misconceived notion of law, strenuously argued about the ambit of Order 1 Rule 10, CPC and placed reliance on a Full Bench decision of this Court reported in Hardeva Vs. Ismail and Others, as well on a Division Bench decision reported in 1984 RLR 316. Since this argument of Learned Counsel is based on mis-conception of law and fact, therefore, it is not acceptable to me and hence repelled as fallacious.

6. As a result of the aforementioned discussion, the revision petition is dismissed in limine.