
(2008) 05 RAJ CK 0149
In the Rajasthan High Court
Case No : Civil Writ Petition No. 37 of 2008

Om Prakash

APPELLANT

Vs

Civil Judge (J.D.), Sri Doongargarh and Another

RESPONDENT

Date of Decision : 22-05-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1
Transfer of Property Act, 1882 — Section 106

Citation : (2008) 3 WLN 309

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Judgement

Dinesh Maheshwari, J.—The petitioner is tenant in a shop situated at Sri Dungargarh and is facing a suit for eviction filed by the landlord-plaintiffrespondent No. 2 under the provisions of the Transfer of Property Act, 1882 ("the Transfer of Property Act" hereafter).

2. After framing of the issues in the suit, an application was moved on behalf of the plaintiff for deleting issues Nos. 2 and 12 framed respectively on the questions of reasonable and bona fide requirement of the plaintiff and comparative hardship with the submissions that the suit having been filed under the Transfer of Property Act, such questions were not required to be determined in this case. Another prayer was made for correction of typographical error of the date as mentioned in issue No. 4; and yet another prayer was made with the submissions that the specific issue on the question of termination of tenancy was required to be framed and hence, issue No. 3 be amended to state the question if the plaintiff has terminated the tenancy of the defendant with effect from 30.04.2004 by serving the notice dt. 26.03.2004.

3. The learned trial Court has allowed the application moved by the plaintiff by its impugned order dt. 24.07.2007 and has deleted issues Nos. 2 and 12 framed on the questions of reasonable and bona fide requirement and comparative hardship with the observations that, admittedly, the suit has been filed under the

Transfer of Property Act and the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (the Act of 1950 hereafter) has been repealed and the new Act (Rajasthan Rent Control Act, 2001 the Act of 2001 hereafter) has not been extended to the township of Sri Dungargarh and hence, suits for eviction (for the area in question) could be filed only under the Transfer of Property Act. Typographical error in issue No. 4 has been corrected with the consent of the parties; and issue No. 3 that was framed stating the question if the defendant was a trespasser after completion of the period of notice, has been amended in the manner that the question would now be if the plaintiff has terminated the tenancy from the mid-night of 30.04.2004 by serving a notice u/s 106 of the Transfer of Property Act.

4. The defendant-petitioner has preferred this writ petition seeking to challenge deletion of issues Nos. 2 and 12 essentially on the ground that the issues are required to be framed on the pleadings of the parties and had rightly been framed by the learned trial Court that were not required to be deleted; and that the petitioner has raised serious objection in his written statement that the litigation cannot be proceeded under the Transfer of Property Act and if the Act of 2001 is not held applicable to the area in question, the rights of the parties shall have to be governed by the Act of 1950. However, learned counsel Mr. Chaitanya Gahlot appearing for the petitioner candidly pointed out that similar writ petitions led by CWP No. 36/ 2008 have already been dismissed on 11.03.2008 and has placed for perusal a photostat of the order passed by this Court wherein, while rejecting similar nature contentions, this Court has pointed out:

11. It is to be noticed that as per the provisions of Order 14 Rule 1 of CPC, the question of framing issues arise only when material proposition of fact or law is affirmed by one party and denied by other. The facts pleaded by the plaintiff in the plaint, which are not relevant to the controversy involved in the suit cannot be said to be material facts requiring framing of the issue on the same being denied by the defendant. The civil Court is not under an obligation to frame the issue mechanically on the basis of the pleadings of the parties on the same being raised, without its satisfaction about its necessity for adjudication of the actual lis between the parties. The Courts are not supposed to pronounce on each and every question just because the same has been raised by a parties to the proceedings, even after having arrived at a categorical conclusion that the question sought to be raised is not germane to the real lis between the parties and no corresponding relief has been sought by the plaintiff. The Courts time cannot be permitted to be wasted for determination of the issues which are not required to be adjudicated upon for the determination of rights and liabilities of the parties and to do the complete justice.

12. On the facts and in the circumstances of the case, I am fully satisfied that for determination of the lis between the parties, the issue Nos. 2 and 11 with regard to reasonable bona fide necessity and comparative hardship are not required to be determined, therefore, the learned trial Court has committed no error in

passing the impugned order deleting the said issues.

5. The position remains indisputable that the Act of 1950 has been repealed by the Act of 2001 but operation of the Act of 2001 to any area whereto it is extendable depends on issuance of notification by the State Government as required by Sub-section (2) of Section 1 of the Act of 2001 vide Rampal v. All Brahmin Swarnkar Panchayat and Ors. 2007 (3) DNJ (Raj.) 1363; and the position further remains indisputable that the requisite notification extending the Act of 2001 to the area in question has not been issued by the State Government. The suit for eviction by the landlord has, thus, been filed and maintained under the provisions of Transfer of Property Act; and obviously, in such a suit consideration of any ground of eviction as provided under the inapplicable rent control legislation is not germane to the real questions in controversy nor right to relief depends upon determination of any such ground.

6. Even if the plaintiff would suggest some ground with reference to such rent control legislation like reasonable and bona fide requirement, the same would not be of material proposition of fact or law so as to call for determination. The order passed by the learned trial Court deleting such unnecessary issues remains unexceptionable.

7. In view of the aforesaid, this writ petition is required to be, and is rejected.