

(2024) 05 RAJ CK 0047

In the Rajasthan High Court

Case No : Civil Writ Petition No. 19566 Of 2022

Ramdayal

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 07-05-2024

Acts Referred:

Code Of Civil Procedure, 1908 — Order 1 Rule 10

Citation : (2024) 05 RAJ CK 0047

Hon'ble Judges : Vinit Kumar Mathur, J

Bench : Single Bench

Advocate : Manoj Bohra, Vasu Dev Gaur, Shanker Singh Rajpurohit

Final Decision : Disposed Of

Judgement

Vinit Kumar Mathur, J

1. Heard learned counsel for the parties.
2. The present writ petition has been filed against the order dated 29.03.2022 passed by Assistant Collector and Sub Divisional Officer, Jodhpur (South) and the order dated 07.12.2022 passed by the Board of Revenue, Rajasthan, Ajmer.
3. Briefly, the facts giving rise to the present writ petition are that petitioner preferred a suit for declaration and grant of khatedari rights before the Assistant Collector and Sub Divisional Officer, Jodhpur. In the suit preferred by the petitioner, the private respondent- Prakash filed an application under Order 1 Rule 10 of CPC for impleading him as party respondent. The application filed by the private respondent was allowed by the Assistant Collector and Sub Divisional Officer, Jodhpur (South) vide order dated 29.03.2022. Against the order dated 29.03.2022, the petitioner preferred a revision petition before the Board of Revenue and the Board of Revenue, after hearing the counsel for the parties, dismissed the revision petition vide order dated 07.12.2022. Hence, the present writ petition has been filed.

4. Learned counsel for the petitioner vehemently submits that learned Assistant Collector and Sub Divisional Officer, Jodhpur (South) has committed an error while allowing the application of the private respondent preferred under Order 1 Rule 10 of CPC. He further submits that before filing of the present application under Order 1 Rule 10 of CPC, the private respondent had filed one more application for the same cause, however, the same was withdrawn by him and a fresh application has been filed which has been allowed by the trial Court.

5. Learned counsel for the petitioner further submits that the petitioner is in possession of the property in question and no relief is claimed by the petitioner in the suit against the private respondent, therefore, he is not necessary party in the present suit. He also submits that grandfather of petitioner Shri Ganesh Ji S/o Shri Chatra was having possession of the property in question and after death of Shri Ganesh Ji, petitioner's father Shri Mangi Lal was in possession of the suit property and from Shri Mangi Lal, petitioner has received possession of the property in question. He further submits that since the relief claimed in the suit is against the State Government, therefore, the private respondent is neither necessary party nor proper party in the suit proceedings.

6. In support of his contentions, learned counsel for the petitioner has relied upon a judgment of Hon'ble the Supreme Court rendered in the case of Kanaklata & Ors. Vs. Naba Kumar Das & Ors., reported in (2018) 2 SCC 352. On the strength of this judgment, he submits that it is the sole prerogative of the plaintiff to implead the party respondent in his suit and therefore, he cannot be forced to implead any other person in the suit as party respondent. He, therefore, prays that the writ petition may be allowed and the orders dated 29.03.2022 and 07.12.2022 may be quashed and set aside.

7. Per contra, learned counsel for the private respondent submits that since the private respondent is real brother of petitioner-plaintiff and the property in question was in possession of their grandfather, therefore, he has right in the property and any decision in the suit preferred by the petitioner will affect his rights. He further submits that in the reply filed by the petitioner to the application preferred under Order 1 Rule 10 of CPC, it has been admitted that the private respondent- Prakash is having a right in the property on the strength of a Will made by Shri Mangi Lal in his favour.

8. Learned counsel for the private respondent submits that if the private respondent is impleaded as party respondent, no prejudice will be caused to the petitioner. He further submits that the learned Assistant Collector and Sub Divisional Officer, Jodhpur (South) has rightly allowed the application preferred by the private respondent vide order dated 29.03.2022 and the learned Board of Revenue has also rightly rejected the revision petition filed by the petitioner. He, therefore, submits that no interference is warranted in the present case and prays that the writ petition may be dismissed.

9. I have considered the submissions made at the bar and gone through the

relevant record of the case including the orders impugned herein.

10. Since the facts are not in dispute, it can safely be inferred that the land in possession of the petitioner is actually the land of his grandfather Shri Ganesh Ji and the private respondent is real brother of the petitioner-plaintiff. The suit filed by the present petitioner-plaintiff is for declaration and grant of khatedari rights. Although no relief has been sought for directly against the private respondent, however, the nature of the suit and the relief prayed for in the suit clearly show that rights of real brother i.e. the private respondent will be affected by the orders to be passed in the suit of the petitioner-plaintiff.

11. The petitioner has admitted in his reply filed to the application preferred by the private respondent that Prakash is having a right on the basis of a Will made in his favour by their father Shri Mangli Lal, therefore, in these circumstances, this Court feels that the private respondent is necessary party in the matter and no prejudice will be caused to the petitioner, if he is impleaded as party respondent in the present suit proceedings.

12. The judgment relied upon by learned counsel for the petitioner is noted to be rejected on the ground that any order passed in the suit proceedings initiated by the petitioner will affect the rights of his real brother, who is impleaded as party respondent, thus, the facts of the judgment relied upon by learned counsel for the petitioner are clearly distinguishable from the facts of the present case, therefore, the same does not render any help to the petitioner.

13. The reasoning recorded by the Courts below in the orders impugned does not suffer from any infirmity and therefore, no interference is warranted in the writ jurisdiction. The writ petition is therefore, bereft of merit and the same is dismissed.

14. Stay petition as well as other pending misc. applications, if any, stand disposed of accordingly.