
(2012) 08 RAJ CK 0081
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7861/08

Ranjeet Singh and Others

APPELLANT

Vs

Smt. Bhagu Bai and Others

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 227

Citation : (2012) 08 RAJ CK 0081

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Kishore Gour on behalf of Mr. Bharat Vyas, for the Appellant; Rajesh Mootha, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ms. Justice Bela M. Trivedi

1. The present petition has been filed by the petitioners-defendants challenging the order dated 4.7.2008, passed by the Additional District and Sessions Judge, Jhalawar, (hereinafter referred to as the appellate court) in Civil Misc. Appeal No. 9/2008, whereby the appellate court has confirmed the order dated 24.4.08 passed by the Additional Civil (J.D.) Pidawa, district Jhalawar (hereinafter referred to as the trial court) in Civil Misc. Case No. 27/07. The respondent nos. 1 and 2-plaintiffs, have filed the suit before the trial court against the petitioners-defendants, FOR permanent injunction seeking their right to way through the disputed passage existing nearby the agricultural fields of the petitioners and the respondents. The respondents-plaintiffs had also filed an application seeking temporary injunction under Order XXXIX Rule 1 & 2 C.P.C. against the petitioners-defendants, which was allowed by the trial court. The appeal filed by the petitioners-defendants, before the appellate court has also been dismissed by the impugned order.

2. It has been submitted by learned counsel Mr. Kishore Gour, for the petitioners

that both the courts below have failed to appreciate that the respondents-plaintiffs had an alternative right of way and could not claim right through the disputed passage which belongs to the petitioners-defendants. According to him, both the Courts have mis-appreciated the evidence on record and also the reports of the Commissioner, and held that the respondents did not have any other right of way. However, the learned counsel Mr. Rajesh Mootha, for the respondents has submitted that both the courts below have, prima facie, found that respondents-plaintiffs had no alternative way to pass, which does not call for any interference of this Court under Art. 227 of the Constitution of India.

3. Having regard to the submissions made by learned counsels for the parties and to the impugned orders passed by the trial court as well as by the appellate court, it transpires that the respondents-plaintiffs have relied upon the two reports of the Commissioner, in which it was mentioned that the respondents-plaintiffs did not have the alternative way except through the disputed passage. There being concurrent findings of facts recorded by both the courts below, this Court exercising limited jurisdiction under Art. 227 of the Constitution of India, is not inclined to interfere with the same. However, having regard to the nature of controversy, the trial court is required to be directed to expedite the hearing of the suit. In that view of the matter, the Petition deserves to be dismissed and is accordingly dismissed. The trial court is directed to expedite the hearing of the suit. It is clarified that any observations made by this Court and by both the courts below in the impugned orders, shall not come in the way of the trial court while deciding the suit.