
(2015) 01 RAJ CK 0300
In the Rajasthan High Court
Case No : Civil Second Appeal No. 303 of 2007

Representatives of Maheshwari Samaj	APPELLANT
Vs	
Narendra Kumar and Others	RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Citation : (2015) 3 WLN 299

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : A.K. Khatri, for the Appellant; Akhil Kumar Gupta on behalf of H.K. Jangid, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. Vineet Kothari, J—This second appeal is arising out of the judgment and decree dt. 30.03.2007 passed by the learned Additional District Judge (Fast Track) No. 1, Pali Headquarters Jaitaran in Civil Appeal (Decree) No. 4/2007 "Representatives of Maheshwari Samaj Ramniwas & Anr. v. Narendra Kumar & Anr." dismissed the appeal filed by the present appellant-plaintiffs and affirmed the judgment and decree dt. 19.12.2006 passed by the learned Civil Judge (Junior Division), Jaitaran in Civil Original Suit No. 11/2005 "Representatives of Maheshwari Samaj - Ramniwas & Anr. v. Narendra Kumar & Anr." by which, the learned Civil Judge (Junior Division) had dismissed the suit filed by the plaintiff seeking permanent injunction. The present second appeal was earlier decided by this Court on 23.09.2008 against which, the respondents approached the Hon'ble Supreme Court way of Civil Appeal No. 7126/2013 arising of SLP (C) No. 27920/2008 Narendra Kumar & Anr. v. Representatives of Maheshwari Samaj in which, the order dt. 23.08.2013, the Hon'ble Supreme Court has remitted the matter to this Court to decide the appeal only after formulation of substantial question of law.

2. Having heard the learned counsels for the parties and having examined the record of the case as also the order dt. 23.08.2013 of the Hon'ble Supreme

Court, the following substantial question of law is framed for consideration by this Court in the present second appeal:--

"Whether the Court below was justified in dismissing the suit filed by the plaintiff without giving sufficient opportunity to the plaintiff for leading the evidence in the present suit?"

3. By the order dt. 23.09.2008, this Court had remanded the matter back to the learned Trial Court and directed it to permit the plaintiff to lead his evidence on payment of costs of Rs. 2,500/- to the defendants. The relevant portion of the order dt. 23.09.2008 is quoted herein below for ready reference:--

"5. Considering the submissions made at the Bar and in view of the facts and circumstances of the case, this Court is of the opinion that though the learned trial Court cannot be said to have erred in closing plaintiff's evidence, however, the suit appears to have been rejected on that very day even without defendants leading any evidence and this in process has caused prejudice to the plaintiff and the suit has been dismissed without fair trial as no evidence was led by either of the parties. However, the suit can be restored at this stage in second appeal only if the plaintiff - appellant agrees to compensate the defendants by way of cost which is quantified at Rs. 2,500/- which shall be paid by the plaintiff - appellant to the defendant within a period of one month from today.

6. Consequently this appeal is allowed. The impugned judgment of both the Courts below dtd. 30.3.2007 of the appellate Court and 19.12.2006 of the learned trial Court are set aside and suit No. 11/2005 is restored to the learned trial Court for trial afresh. The parties are directed to remain present before the learned trial Court on 21.11.2008 and in the facts and circumstances of the case, the learned trial Court is requested to try the suit expeditiously and dispose of the same preferably within a period of one year from today."

4. After having heard the learned counsels for the parties and having perused the record of the case again, this Court is of the opinion that the substantial question of law framed above deserves to be answered in favour of the appellant-plaintiff in affirmative and the matter deserves to be remanded back to the learned Trial Court for decision afresh after giving an opportunity to the plaintiff for leading its evidence subject to the payment of costs of Rs. 2,500/- to be paid to the defendants which is, according to the plaintiff, said to have already been deposited by the plaintiff in the Trial Court in pursuance of the order dt. 23.09.2008. Accordingly and in view of the discussion foregoing, this second appeal filed by the plaintiff-Representatives of Maheshwari Samaj through Ramniwas & Anr. is disposed of with a remand to the learned Trial Court to decide the suit afresh after allowing the plaintiff to lead its evidence and thereafter, in rebuttal, to allow the defendants to lead their evidence. In the first instances, the parties may appear before the learned Trial Court on 02.02.2015 and it is expected of the both the parties not to delay the matter and produce all its evidence within the short time to be granted by the learned Trial Court as per

its own convenience. A copy of this order be sent to the parties concerned forthwith.