
(2014) 05 RAJ CK 0170

In the Rajasthan High Court

Case No : Civil Writ Petition No. 16322 of 2011

Sabir

APPELLANT

Vs

Abdul Karim

RESPONDENT

Date of Decision : 26-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, Order 22 Rule 4(4)

Citation : (2014) 3 CDR 1713

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : Anoop Dhand, Advocate for the Appellant

Judgement

R.S. Chauhan, J.—The petitioner, Sabir, is aggrieved by the order dated 28.3.2011 passed by the Civil Judge (S.D.), Fatehpur Shekhawati, District Sikar, whereby an application filed by the petitioner under Order 22, Rule 4 CPC has been rejected, and the case has not been declared as having abated. The learned counsel for the petitioner has contended that with the death of Sugra, the respondent No. 2, her legal representatives should have been taken on record. However, as they were not taken on record, the case abates. But notwithstanding the requirement of Order 22 Rule 4 CPC, the learned Magistrate has exempted the plaintiff from bringing on record the legal representatives of the respondent No. 2 under Order 22 Rule 4(4) CPC. Therefore, the learned Magistrate has committed an illegality. Thus, the impugned order deserves to be set aside.

2. Heard the learned counsel for the petitioner and perused the impugned order.

3. A bare perusal of the plaint filed by the respondent-plaintiff No. 1, Abdul Karim, clearly reveals that he had impleaded Sugra along with her three sons, namely Yakub, Sadiq and Sabir, as party defendants. By order dated 21.9.1996, ex-parte proceedings were initiated against Sadiq. Subsequently, both Yakub and Sadiq expired. The respondent No. 2, Sugra, expired on 3.11.2010 leaving behind her three sons. Since three sons were already arrayed as respondent-

defendants, there was no need to take her legal representatives on record. Moreover, since ex-parte proceedings were already initiated against Yakub and Sadiq, the learned Magistrate had rightly exempted respondent-plaintiff from bringing the legal representatives on record.

4. Order 22 Rule 4(4) CPC clearly states that the Court may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file written statement, or who having filed it, has failed to appear before the Court in order to contest the suit. In the present case, Yakub and Sadiq had failed to appear before the Court to contest the suit. Therefore, ex-parte proceedings were initiated against them. Hence, the exemption given by the learned Magistrate is in consonance with the Order 22 Rule 4(4) CPC. For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. The writ petition being devoid of any merit is, hereby, dismissed. Consequently, the stay application also stands dismissed.