
(2012) 02 RAJ CK 0034
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11114 of 2010

Shanker Lal

APPELLANT

Vs

Narayan and Others

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Constitution of India, 1950 — Article 227

Citation : (2012) 02 RAJ CK 0034

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Dr. Justice Vineet Kothari

1. By way of present writ petition, the petitioner - plaintiff in a suit for specific performance has challenged the impugned order dtd.23.10.2010 (Annex.6) passed by the learned Additional Dist. Judge No. 3, Udaipur in Civil Appeal No. 22/2005 whereby the learned Court below allowed the respondent's application under Order 41 Rule 27 C.P.C. by which the defendant - respondent No. 1 sought to bring on record the subsequent judgment of the appellate court in case No. 42/1995 decided on 9.8.2002. Being aggrieved by this, the petitioner has challenged the said order in the present writ petition under Article 227 of the Constitution of India.

2. The learned counsel for the plaintiff- petitioner Mr. Nitesh Bagri submitted that this evidence was already considered by the learned Court below while passing the order dtd. 22.2.2005 and therefore, there was no occasion for the learned appellate Court to take the same on record.

3. On the contrary, Mr. Deelip Kawadia supported the impugned order and submitted that the said judgment of the appellate Court dtd.9.8.2002 came after filing of the suit No. 42/1995 and consequently, the learned appellate Court was

perfectly justified in allowing the present application under Order 41 Rule 27 C.P.C. taking the said judgment on record, however, leaving it for the parties to contest its effect on the present appeal at the time of final hearing of the appeal.

4. Having heard the learned counsels, this Court is of the opinion that that the impugned order dtd.23.10.2010 passed by the learned Additional Dist. Judge No. 3, Udaipur - Narayan Lal V/s Shanker Lal and Ors. does not suffer from error requiring interference by this Court in writ jurisdiction under Article 227 of the Constitution of India. The said order is perfectly justified in the circumstances of the case and the present writ petition of the plaintiff is found to be devoid of merit.

5. The present writ petition is accordingly dismissed. No order as to costs.