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(2012) 05 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4948 of 2012 and Civil Miscellaneous Stay Application No. 4097 of 2012

Uttam Chand and Others — APPELLANT

Vs

Civil Judge and Others — RESPONDENT

Date of Decision : 18-05-2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10(3)

Citation : (2012) 2 WLN 525

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Advocate : Alkesh Jain, for the Appellant;

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—By way of the instant writ petition, the petitioners-plaintiffs have implored to quash and set-aside the order dt. 02.03.2012, whereby the learned Civil Judge (Jr. Division), Tijara dismissed the prayer of the plaintiffs-petitioners for appointment of Commissioner second time for the purpose of local inspection of the site in question. Having heard the learned counsel for the petitioners and carefully perused the impugned order, it is noticed that earlier the Court had appointed Commissioner for local inspection and the petitioner again filed second application imploring that the Commissioner may be re-appointed for local inspection of the site. The Court found that the Commissioner had already submitted his report on the specific point and there was no occasion to appoint Commissioner again for collecting the evidence. The Court, on the contrary, observed that the petitioners-plaintiffs had filed this application just with a view to procrastinate the trial of the suit.

2. Learned counsel for the petitioners has utterly failed to convince me so as to interfere with the impugned order.

3. Learned counsel took me through sub-rule (3) of Rule 10 of Order 26 of CPC

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and contended that if the Court was dissatisfied for one or the other reason, it could direct further enquiry to be made. It is relevant to point out that sub-rule (3) of Rule 10 of Order 26 CPC postulates the satisfaction of the Court and not the satisfaction of the party. It is categorically mentioned in sub-rule (3) that if the Court is, for one or the other reason, dissatisfied with the proceedings of the Commissioner/ it could direct further enquiry to be made. The Court is found to have been fully satisfied with the Commissioner''s report filed earlier. The Court did not find anything which was oblique or omnibus in the earlier Commissioner''s report and the Commissioner was not required to be appointed again for local inspection. Hence, in view of the above facts and circumstances, I do not find any perversity or illegality in the impugned order. Conversely, the writ petition is found to be totally devoid of any substance, which deserves to be dismissed at the threshold.

4. For the reasons stated above, the writ petition fails and the same being bereft of any merit stands dismissed accordingly. Consequent upon the dismissal of writ petition, the stay application, filed herewith, does not survive and the same also stands dismissed.

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