
(2017) 03 RAJ CK 0133
In the Rajasthan High Court
Case No : 48 of 2017

Vikas Garg

APPELLANT

Vs

Govind Naraian Agrawal & ors

RESPONDENT

Date of Decision : 06-03-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 7 Rule 11](#) -
Rajasthan Agricultural Produce Markets Act, 1961, Section 31, Section 16, Section 31(2)

Citation : (2017) 03 RAJ CK 0133

Hon'ble Judges : Sangeet Lodha

Bench : SINGLE BENCH

Advocate : Manoj Bhandari

Judgement

1. This petition is directed against order dated 22.12.16 passed by the Additional District Judge No.2, Jodhpur Metropolitan City, in Civil Original Suit No.28/14, whereby an application preferred by the petitioner under Order VII Rule 11 CPC, seeking rejection of the plaint, stands dismissed.

2. The first respondent filed a suit for cancellation of allotment of a shop in Main Mandi Premises, Krishi Upaj Mandi Samiti, Jodhpur made in favour of M/s. Anshul Trading Company, a firm

run by the defendants, the petitioner and second respondent herein.

3. During the pendency of the petition, the petitioner filed an application seeking rejection of the plaint on the ground that the suit instituted against the Krishi Upaj Mandi Samiti without service of two months notice in writing as mandated by provisions of Section 31 of Rajasthan Agriculture Produce Market Act, 1961 (for short "the Act of 1961") is liable to be rejected. That apart, the petitioner contended that the plaint is also liable to be rejected on the ground of availability of an efficacious alternative statutory remedy to the plaintiff under Section 16 of the Act of 1961 and further that the suit filed after expiry of period of six months

from the date of accrual of cause of action, is liable to be rejected by virtue of provisions of sub-section (2) of Section 31 of the Act of 1961.

4. The application stands rejected by the court below. Hence, this petition.

5. Learned counsel appearing for the petitioner that as per averments made in the plaint, the cause of action had accrued to the petitioner in the year 2012 and therefore, the suit filed after expiry of period of six months, is liable to be rejected by virtue of provisions of sub-section (2) of Section 31 of the Act of 1961. Learned counsel submitted that against the allotment made, statutory remedy of appeal is available to the petitioner under Section 16 of the Act and therefore, the suit filed is barred by law. Learned counsel submitted that the court below has seriously erred in rejecting the application filed on behalf of the petitioner

on the ground that the questions with regard to the accrual of cause of action and limitation, are mixed questions of law and facts, which cannot be determined while deciding the application under Order VII Rule 11 CPC.

6. I have considered the submissions of the learned counsel and perused the material on record.

7. It is settled law that while deciding the application seeking rejection of the plaint under Order VII Rule 11 (a) & (d) CPC, the court is not competent to go into correctness or otherwise of the allegation contained in the plain. The plaint can only be rejected if from bare perusal of the statement in the plaint without any addition or subtraction it appears that it does not disclose any cause of action or it appears to be barred by law.

8. A perusal of the plaint reveals that before filing it, the Krishi Upaj Mandi Samiti was served with a notice dated 26.12.13 and therefore, the contention sought to be raised regarding non compliance of the condition precedent of service of notice upon the Krishi Upaj Mandi Samiti for maintainability of the suit, as mandated by Section 31 of the Act, is devoid of any merit. The plaintiff has claimed accrual of the cause of action in the first instance in 2012 when the defendants refused to hand over the possession of the shop and thereafter, in October, 2013 on coming to know about the forged documents being prepared in respect of the allotment of the shop in question. In this view of the matter, prima facie the suit filed does not appear to be barred by limitation. In any case, on the facts and in the circumstances of the case, the question with regard to accrual of cause of action and limitation remain mixed questions of law and facts, which could be decided only on the basis of the evidence to be led by the parties. Further, Section 16 of the Act, in no manner specifically or impliedly bars the jurisdiction of civil court. As a matter of fact, the question whether an appeal would be maintainable under Section 16 of the Act in respect of the dispute raised in the suit, remains a debatable question. In this view of the matter, in the considered opinion of this court, the court below has committed no jurisdictional error in dismissing the application preferred by the petitioner seeking rejection of

the plaint.

9. No case for interference by this court in exercise of its revisional jurisdiction is made out.

10. The revision petition is therefore, dismissed.