

(2016) 10 RAJ CK 0042

RAJASTHAN HIGH COURT (JAIPUR BENCH)

Case No: Civil Revision Petition No. 173 of 2015.

Rajendra Meena S/o Shri Ram
Charan Meena, By Caste Meena,
Resident of House No. 58, Gopal
Vihar, Police Line, Kota (Raj.) -
Defendant-petitioner @HASH
Harendra Kumar S/o. Shri
Babulal Meena, aged about 35
years, by Caste Meena, Resident
of Plot No. 33, Gu

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 7, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11

Citation: (2016) 4 DNJ 1612

Hon'ble Judges: Jainendra Kumar Ranka, J.

Bench: Single Bench

Advocate: Mr. Rajvir Sharma, Advocate, for the Petitioner; Mr. RP Garg Mr. Subham Jain
Mr. Inderjeet Choudhary, Advocates, for the Respondents

Final Decision: Dismissed

Judgement

Mr. Jainendra Kumar Ranka, J. - Instant revision petition at the instance of defendant-petitioner has been directed against the order dated 14/08/2015 passed by the trial court dismissing the application filed by the defendant-petitioner under Order 7, Rule 11 CPC.

2. Brief facts of the case as noticed are that plaintiff-respondent filed a suit before the learned trial court for permanent injunction seeking relief therein that the defendant-petitioner may be restrained from dispossessing the plaintiff-respondent from the suit property and it was further prayed that the defendant-respondent

(UIT, Kota) may also be restrained from issuing Patta in favour of defendant-petitioner.

3. During pendency of the suit, an application under Order 7, Rule 11 CPC came to be filed raising objection regarding maintainability of the suit before the Civil Court contending therein that the suit property is an agricultural land and is accordingly recorded as an agricultural land in the revenue records and is not an abadi land and as such, the suit filed by the plaintiff-respondent is not maintainable before the Civil Court and can be tried by the Revenue Court only.

4. The learned trial court after hearing the parties passed an order on 14/08/2015 dismissing the application filed by the defendant-petitioner under Order 7, Rule 11 CPC. Hence, instant revision petition filed by the defendant-petitioner.

5. Learned counsel for the defendant-petitioner submits that the learned trial court has erred in law in dismissing the application without considering the averments made in the applications in correct perspective and has failed to appreciate that the plaintiff-respondent has not mentioned in the suit that the suit property is an abadi land and once the suit property is recorded as an agricultural land, it is settled proposition of law that the agricultural land will remain agricultural land unless its character is changed by competent authority under the provisions of law and that apart the agricultural land cannot be used for any other purpose unless its use is changed by competent authority and further the Rajasthan Tenancy Act, 1955 provides that the relief of injunction in regard to agricultural land can be granted by the revenue court only. In support of his submission, he relied upon the judgments of this Court rendered in the case of **Ram Kripal Das Ji Charitable Trust v. Phool Chand and ors.: 2012(1) DNJ (Raj.) 531** and M/s. Rajasthan Electric and Motor Store and Ors. v. The State of Raj. and Ors.: (SB Civil Writ Petition No. 3323/2006), decided on 16/06/2016.

6. Per-contra, learned counsel for the plaintiff-respondent, while supporting the order of the learned trial court, has contended that the order passed by the learned trial court is just and proper and no ambiguity or illegality has been committed by the learned trial court in passing the order impugned and so far as the objection that the suit property is an agricultural land or abadi land, the trial court has arrived at a specific finding that such question can be decided only after leading evidence and such finding have been arrived at by the learned trial court after relying upon not only the judgment rendered by the Apex Court but also catena of judgments rendered by this Court in similar facts and circumstances and as such the order of the learned trial court being passed in accordance with law is not required to be interfered with. In support of his submission, he relied upon the judgment rendered by the Apex Court in the case of P.V. Guru Raj Reddy Rep. By GPA Laxmi Narayan Reddy and Anr. v. P. Neeradha Reddy and Ors. Etc. (Civil Appeal No. 5254 of 2006), decided on 13/02/2015.

7. I have heard learned counsel for the parties and have gone through the order of the learned trial court as well as the material available on record including the case law cited at bar.

8. The submission made by learned counsel for the defendant-petitioner is bereft of any merit for the reason that the suit for permanent injunction seeking relief came to be filed by the plaintiff-respondent for restraining the defendant-petitioner from dispossessing the plaintiff-respondent from the suit property and it has come in the pleadings of the suit that the suit property is surrounded by abadi and the learned trial court after going through the averments made in the application under Order 7, Rule 11 as also the submissions made on behalf of the defendant-petitioner, relying on the judgment of the Apex Court as also this Court, wherein it has been held that the question as to whether the land is agricultural or otherwise, would be decided after recording the evidence, has arrived at a specific finding that such question/objection can be decided after framing issues and leading evidence and the defendant-petitioner has been granted liberty to raise all such pleas in his written statement so an issue in this regard can be framed and decided on the basis of the pleadings and evidence if the parties.

9. As far as deciding objections under Order 7, Rule 11 CPC is concerned, it is settled position of law that for such decision only plaint averments are to be looked into without the aid of any averment in the written statements as such, I find no substance in the submission made by counsel for the defendant-petitioner and in my view, no error, illegality or perversity has been committed by the learned trial court in arriving at the finding in the order impugned so as to call for interference by this Court. So far as the judgments relied upon by counsel for the defendant-petitioner, referred to supra, the facts are distinguishable and are not applicable to the facts and circumstances of the instant case.

10. Consequently, the revision petition, being devoid of merits, stands dismissed.