

Raj Kumar and ors. Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/475042

Court : Allahabad

Decided On : Apr-22-2004

Reported in : 2004(3)AWC2515; [2004(102)FLR559]

Judge : Anjani Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 11

Appeal No. : C.M.W.P. No. 16279 of 2004

Appellant : Raj Kumar and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Anuj Kumar, Addl. S.C. and S.C.

Advocate for Pet/Ap. : S.S. Maurya, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

Anjani Kumar, J.

1. Heard learned counsel for the petitioner.

2. The petitioner, aggrieved by an order passed by the trial court rejecting his application 71Ga and objection 77Ga.
3. The petitioner raised an objection that the suit filed on behalf of Gaon Sabha cannot be filed through a private counsel who is not a penal lawyer and thus there is violation of Para 103 of the Gram Samaj Manual. The trial court accepted the plea and rejected the plaint under Order VII. Rule 11. Aggrieved thereby the plaintiff preferred an appeal before the lower appellate court. The lower appellate court reversed the order passed by the trial court and held that the suit is maintainable. Aggrieved thereby the petitioner approached this Court by means of this writ petition.
4. Learned counsel for the petitioner could not demonstrate that the provision of Para 103 of Gram Samaj Manual is mandatory. In the absence of any such provision or any law the provision regarding procedure is always held to be directory unless specially made mandatory. It having not done the argument of the learned counsel for the petitioner cannot be accepted.
5. The writ petition is dismissed.