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Court : Rajasthan

Decided On : Mar-07-1977

Reported in : 1977WLN(UC)61

Judge : S.N. Modi, J.

Appeal No. : S.B. Civil Revision No. 8 of 1976

Appellant : Brahmanand

Respondent : Prabhati

Disposition : Petition dismissed

Judgement :

S.N. Modi, J.

1. This revision application is directed against the order of 'the Munsif Sri Ganganagar dated 28-11-1975 dis-allowing the application of 'the plaintiff-petitioner to withdraw his suit with liberty to file fresh suit.

2. The plaintiff-petitioner is the owner of plot No. 9 in the Industrial area near Ganesh Talkies Sri Ganganagar. One 'Godam' facing towards the south and situated in the south-west corner of this plot was let out to the defendant on a monthly rent of Rs. 100/-. The plaintiff-petitioner brought a suit for eviction of the defendant from the said 'Godam' and also claimed arrears of rent. The plaintiff

sough eviction on the grounds of default in payment of rent and reasonable and bonafide necessity. The defendant resisted the suit on various grounds. It was pleaded that the 'Godam' as also plot No. 9 in the Indusrtiral area belonged to Hansraj who let it out to the defendant in the year 1967. It was also pleaded the Hansraj died leaving behind his widow. The defendant also denied that the plaintiff was the adopted son of Hansraj. The learned Munsif framed several issues arising out of the pleadings of the parties. Before the case was fixed for evidence the plaintiff moved an application for withdrawal of the suit with permission to bring fresh suit on the same cause of action. This application ws rejected by the learned Munsif. The plaintiff-petitioner has come up in revision against the said order.

3. I have heard the, learned Counsel for the parties, and gone through the record of the case. Under Order 23 Rule 1 the plaintiff, can withdraw a suit as a matter of right but in that case he will be precluded from suing again on the same cause of action. Clause (2) of Rule 1 of Order 23 provides, that where the court is satisfied that the suit must fail by reason of some formal 'defector that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the same subject matter it may, grant the plaintiff permission to withdraw such suit with liberty to institute a fresh suit in respect of the same subject matter.

4. In his application, the plaintiff sought permission for withdrawing the suit with liberty to bring fresh suit on the same subject matter because the defendant has taken pleas that widow of Hansraj is a necessary party and that the notice to quit is illegal as it was issued only in the name of the plaintiff and not in the name of the widow of Hansraj. The learned Munsif held that these defects are not formal and in my opinion rightly. Omission to implead necessary party cannot be regarded as a formal defect. Such a defect is fatal to the suit. The learned Counsel for the petitioner was not able to joint out any other sufficient ground which may justify permission to the petitioner to withdraw the suit with liberty to bring fresh suit. The case of the petitioner does not fall within Clause (2) of Rule 1 of Order 23 and the learned Munsif rightly rejected the application.

5. There is no force in this revision petition and is dismissed. Having regard to the circumstances of the case I leave the parties to bear their own costs in this Court.

