

Smt. Kala and Others Vs. Additional District Judge and Others

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Court : Rajasthan

Decided On : Jul-28-2011

Judge : Mahesh Bhagwati, J.

Acts : Code Of Civil Procedure (CPC) - Order 1 Rule 10

Appeal No. : S.B. Civil Writ Petition No.1617 of 2011; S.B. Civil Misc. Stay Application No. 1490 of 2011

Appellant : Smt. Kala and Others

Respondent : Additional District Judge and Others

Advocate for Pet/Ap. : Mr. Prakash Thakuriya, Adv

Judgement :

1. Challenge in this writ petition is to the order dated 6.10.2010, whereby the learned Additional District Judge (Fast Track) No.2, Alwar dismissed the application filed by the petitioners under Order 1 Rule 10 of CPC for impleading them as a party in the suit.

2. Learned counsel for the petitioners canvassed that petitioners are the daughter and sons of respondent no.3 Ram Kishan. Learned counsel further canvassed that the land in question is an ancestral property and the petitioners have got the equal share in that property. Respondent no.3 Ram Kishan sold the property to respondent no.2 Chet Ram as he was a patient of schizophrenia and did not

understand the merits of the sale. Since the petitioners are the necessary party for the decision of the suit, hence they are entitled to be impleaded as a party-plaintiffs, but the learned trial court has arbitrarily dismissed the application filed under Order 1 Rule 10 CPC.

3. E Converso, the learned counsel for the respondents defended the impugned order and stated the same to be just and proper and did not warrant any intervention.

4. Having considered the submissions made by the learned counsel for the parties and carefully scanned the impugned order, it is noticed that the learned trial court dismissed the application on the ground that the land in question was entered in the name of respondent no.3 Ram Kishan, who was the khatedar tenant on this land and the name of the petitioners did not figure in the revenue record. Learned trial court also observed that, that person is a necessary party in the suit, without whose presence, the suit cannot be justly decided. The petitioners were not found to have been connected with the disputed land in any manner and did not find the petitioners to be a necessary party in the suit. On being asked by this Court also, the learned counsel for the petitioners utterly failed to prove that the disputed land belonged to the petitioners also. The learned counsel further failed to prove that there was any entry of their name in the revenue record in respect of the disputed land. Hence, from no stretch of imagination, the petitioners can be said to be a necessary or proper party to the suit. Learned trial court has rightly dismissed the application filed by the petitioners under Order 1 Rule 10 CPC and I fully concur with the finding arrived at by the learned trial court and thus, the writ petition deserves to be dismissed.

5. For the reasons stated above, the writ petition fails and the same being bereft of any merit stands dismissed.

6. Consequent upon the dismissal of writ petition, the stay application, filed therewith, does not survive and that also stands dismissed.