

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

ORDER

S.B. Civil Writ Petition No.14239/2011

Chandrakanta Saini
Versus
Additional District Judge, Fast Track, No.3, Jaipur Metropolitan,
Jaipur & Ors.

Date of Order :: 29th November, 2013

HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA

Mr.Rajendra Prasad, for the petitioner.
Mr.Manoj Pareek, for the respondents.

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BY THE COURT:

The petitioner/applicant, in the instant writ application, has challenged the legality, validity and correctness of the order dated 18th of August, 2011 whereby the learned Court below dismissed her application moved under Order 1 Rule 10 of the Civil Procedure Code (hereinafter referred to as 'the CPC', for short).

2. The material facts and particulars necessary for appreciation of the controversy in the instant writ application are that respondent-plaintiff (Gopi) filed a suit against respondents/defendant numbers 3,4 and 5 for partition of the property and permanent injunction stating that the suit property was purchased by the plaintiff/respondent and his brother late Shri Gopal Ji through a registered sale deed dated 14th of October, 1969. Shri Gopal Ji died on 21st of June, 1991. The plaintiff/respondent number 2 sold Northern portion of the plot in dispute through a sale deed on 6th of March, 1996. However, in view of a decree passed in a civil suit preferred by the defendant/respondent number 3 to 5. The property in dispute has been adjudicated as joint

property of the plaintiff/respondent and respondents/defendants and therefore, needs to be partitioned by meets and bounds. The petitioner/applicant being daughter of Late Shri Gopal Ji claiming her equal share in the property moved the application, which has been declined.

3. I have heard the learned counsel for the parties and have given my thoughtful consideration to the facts and material available on record.

4. Learned counsel for the petitioner/applicant in view of the facts as stated hereinabove assailed the impugned order dated 18th of August, 2011 as absolutely illegal and contrary to settled law.

5. Per contra, the learned counsel for the respondent/plaintiff supporting the order under challenge dated 18th of August, 2011, submitted that there was no error or illegality calling for interference by this Court under writ jurisdiction since the petitioner/applicant may claim her share only in the property of Late Shri Gopalji and in the present civil suit, the partition of the property in between the respondent/plaintiff (Gopi) S/o Late Shri Bhaunrilal Ji and the legal heirs of late Shri Gopal Ji, is yet to be adjudicated. However, it is not in dispute that the petitioner/applicant is daughter of late Shri Gopal Ji, whose legal representatives (respondents/defendants) had already been arrayed to the earlier suit proceedings.

6. In the peculiar facts and circumstances of the instant case at hand and in view of the material available on record, in my opinion, the impugned order dated 18th of August, 2011 is illegal and cannot be sustained. Since the petitioner/applicant is daughter of late Shri Gopal Ji, she is entitled to equal share along with the respondents/defendants, which is pending adjudication in the civil suit wherein she

moved an application under Order 1 Rule 10 CPC, for her impleadment as a party to the proceedings.

7. In the result, for the reasons and discussions above-mentioned, the writ application succeeds and is allowed. The impugned order dated 18th of August, 2011 passed by the learned Court below in Civil Suit No.156/2008 is hereby quashed and set aside. The application of the petitioner/applicant under Order 1 Rule 10 CPC stands allowed with all consequential benefits.

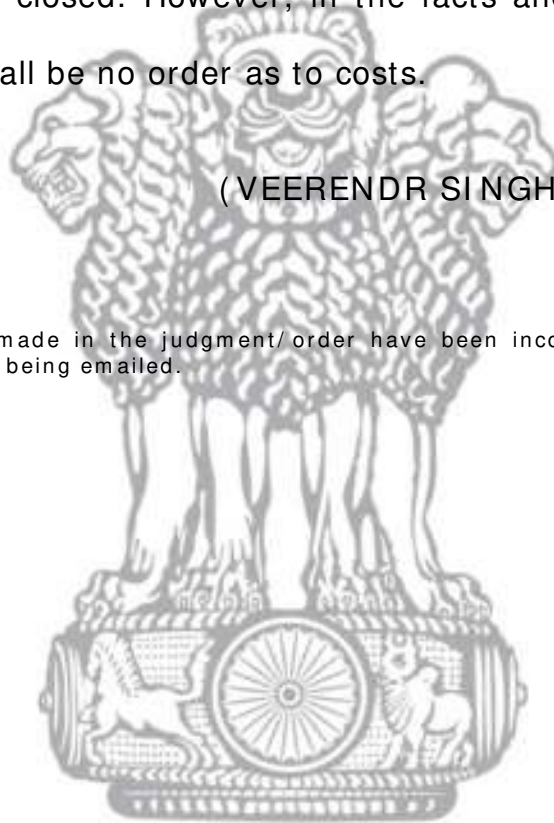
8. In view of the final adjudication on the writ application, the stay application stands closed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(VEERENDR SINGH SIRADHANA), J.

Sunil/ P.A.

All corrections made in the judgment/ order have been incorporated in the judgment/ order being emailed.

(Sunil Solanki)
P.A.



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