
(2014) 12 MP CK 0061
In the Madhya Pradesh High Court
Case No : Cr No. 22/2013

Aabid Hussain

APPELLANT

Vs

Peer Mohd Zahur Alam

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, 115

Citation : (2014) 12 MP CK 0061

Hon'ble Judges : M.K. Mudgal, J

Bench : Single Bench

Advocate : Ravi Ranjan, Learned Counsel, Advocate for the Respondent

Judgement

M.K. Mudgal, J.—Heard on the question of admission.

2. The applicant/defendant has filed this civil revision under Section 115 of the Code of Civil Procedure herein after referred to as the CPC being aggrieved by the order dated 04-12-2012 passed by the Court of IXth Civil Judge Class-2, Jabalpur in Civil Suit No. 22-A/12 dismissing an application filed by the applicant/defendant under Order 12 Rule 6 of the CPC for deciding the issues No. 10 & 11 on the basis of admissions which have come on record in the course of recording the plaintiff's evidence.

3. Heard the arguments of both the parties.

4. The petitioner submits that in the course of recording the statements of the plaintiff's witnesses a few admissions have come on record by the documents Ex. D-1, D-5, D-10, D-11, D-20 as well as the oral statements of the plaintiff's witnesses owing to which the applicant/defendant moved an application under Order 12 Rule 6 of the CPC before the trial praying that the Issue No. 10 & 11 be decided on the basis of the admissions. The said application was dismissed by the trial Court erroneously without considering the merit of the evidence. Hence, it is prayed by the petitioner that the impugned order be set aside and the trial Court be directed to decide the Issue No. 10 & 11 as per admissions which have

come on record.

5. Learned counsel for the respondents/plaintiffs opposing the submissions made on behalf of the applicant/defendant has submitted that the civil suit for eviction has been pending since 1988 against the applicant/defendant who is tenant in the disputed premises owing to which the applicant/defendant is any how trying to delay the case and so the application under Order 12 Rule 6 of the CPC was filed by him malafide before the trial Court as when the Issue No. 10 & 11 are based on the mix question of facts and law they cannot be decided in the course of recording the statements of the plaintiff's witnesses as the applicant/defendant did not state before the Court that he does not want to produce any evidence in his defence. Learned counsel further pleads that the learned trial Court having considered the facts and circumstances of the case has rightly dismissed the application filed by the applicant/defendant.

6. Arguments were considered.

7. On perusal of the record it is evident that the respondents/plaintiffs have filed the suit for eviction against the applicant/defendant on the basis of his being tenant in the disputed property. The said suit has been pending since 1988 i.e. 26 years. Indisputably, when the evidence of the plaintiff was being recorded before the trial Court the said application was filed by the applicant/defendant for deciding the Issue No. 10 & 11 stating that on the basis of admissions which have come on record the said issues be decided first before proceeding with the case further for evidence. On perusal of the impugned order it is evident that the learned trial Court has not committed any error in dismissing the application holding that no such admissions have come on record in course of evidence on the basis of which the said issues can be decided at this stage as the said issues are totally based on the mix question of fact and law. Only the question involving issue of law can be decided as preliminary issues whereas the Issue No. 10 & 11 require evidence of both the parties. Though in course of recording the evidence of plaintiff's witnesses some admissions have come on record through documents as well as oral evidence it does not mean that the Issues No. 10 & 11 can be decided in the pending suit without recording the entire evidence of both the parties before arriving at any judgment on merit. If any admissions come on record these can be considered at the final hearing of the suit.

8. The applicant/defendant placing reliance upon the judgment of Hon''ble Apex Court in the case of Karam Kapahi and Others Vs. Lal Chand Public Charitable Trust and Another, has submitted that on the basis of admission judgment can be passed. There is no dispute about the tenets of the law cited in the Hon''ble Apex Court judgment. However, this fact can only be considered at the final hearing of the suit. The submissions made on behalf of the respondents/plaintiffs that the applicant/defendant has been trying to delay the case appears to be just and proper. The civil suit has been pending for more than 26 years which indicates that the application under Order 12 Rule 6 of the CPC was filed by the applicant/defendant malafide. Therefore the learned trial Court has not committed any

error in dismissing the same.

9. In view of the aforesaid facts the civil revision filed by the applicant/defendant having no substance is hereby dismissed.

10. The effect of the interim order dated 20-02-2013 is hereby vacated.