
(2013) 09 MP CK 0097

In the Madhya Pradesh High Court

Case No : Writ Petition No. 21707 of 2011 (I)

Akbar Khan

APPELLANT

Vs

Smt. Krishna Devi (Dead) Bhagwandas Jhamvar

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2013) 09 MP CK 0097

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : Aparna Singh, for the Appellant; Siddharth Gulatee with Shri Rajeev Malhotra, learned counsel for respondent No. 1(I), (ii), (a), (b)(c), (iii), (iv) and (v) and Shri Adeel Usmani, learned counsel for respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

U.C. Maheshwari, J.—The petitioner- defendant No. 1 has filed this petition under Article 227 of the Constitution of India being aggrieved by the order dated 7.10.2011 passed by the Ist Additional District Judge, Sehore, in COS No. 23-A/07, whereby during the course of final arguments in the matter, the plaintiffs-respondents were directed to supply some better particulars with respect of description of boundary wall of the property in the plaint. The petitioner's counsel after taking me through the impugned order by referring the papers placed on record argued that it is apparent fact on record that after filing the suit, the WS was filed on behalf of the present petitioner and the other defendants in the matter and considering such pleadings issues were framed and after settlement of the same evidence was recorded by the trial court. So till the stage of recording the evidence, neither party had requested the trial court to call any better particulars either in the plaint or WS. In such premises at the stage of final hearing, there was no question before the court to call the better particulars from the plaintiff but contrary to the settled legal preposition respondents-plaintiffs were directed to supply some additional particulars in the

plaint. Such order is not sustainable. She further said that if there is any lacuna in the pleadings of the parties, then the same could be considered by the court on appreciation of the evidence to adjudicate the matter finally but the court can not sit as party in the matter and direct any of the parties of the litigation to fill up the lacuna, if the same is left by any of the parties. So in such premises, the impugned order is not sustainable and prayed to set aside the impugned order by admitting and allowing this petition.

2. Learned counsel for respondent No. 1(I), (ii), (a), (b)(c), (iii), (iv) and (v), plaintiffs by justifying the impugned order said that the trial court is at liberty to call any explanation in the pleadings or any party to clarify the ambiguity in the matter and in such premises, the trial court has not committed any error in passing the impugned order directing the petitioner-defendant to explain and supply better particulars in the plaint and prayed for dismissal of this petition.

3. While learned counsel for respondent Nos. 2 and 3 has supported the aforesaid arguments of the petitioner's counsel and prayed to allow this petition.

4. Having heard the counsel, keeping in view the arguments, I have carefully gone through the papers placed on record alongwith the impugned order. It is settled proposition of law that plaintiffs are sole dominus litus of their litigation and without their request, they could not be insisted by the court to amend the pleadings or to supply better particulars. It is apparent fact that on behalf of the plaintiff-respondents till passing the impugned order no such prayer to amend the pleadings for supply of better particulars was made. Even otherwise, the defendant-petitioner had also not filed any application for appropriate direction to the respondents-plaintiffs to supply better particulars in the plaint. So in the lack of any prayer from the side of the parties, there was no occasion with the trial court to call the better particulars or some particulars in the plaint from the plaintiffs, specially at the stage of final hearing of the matter. In such a circumstances, such an order could have been passed at the time of recording the evidence to clarify the ambiguity but not at the stage of final hearing. At the stage of final hearing, there was no option with the trial court except to hear the arguments and decide the case on merit. So in such premises, the trial court could to have decided the impugned question relating to the lacuna of pleading in the plaint with appropriate reasons.

5. It appears that for one reason or another, best known to the Presiding Officer of the trial court instead to hear and decide the case finally on merits only to prolong the trial of the impugned case the respondent- plaintiff was directed to supply the alleged better particulars in plaint. Such practice is neither healthy nor sustainable under the law. Consequently the impugned order being perverse is set aside with a direction to the trial court to hear the matter finally on some early date and conclude the same within twenty days from the date of filing the copy of this order before such court. The petitioner's counsel is directed to submit the copy of this order before trial court within seven days. The petition is allowed as indicated above. There shall be no order as to cost.