

(2012) 07 MP CK 0068

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12816 of 2011

Diwakar Rao Gurjar

APPELLANT

Vs

Shobna Mishra and Others

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 11

Constitution of India, 1950 — Article 227

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1), 12(1)(a)

Citation : (2012) ILR (MP) 2645 : (2012) 3 MPLJ 652

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Sankalp Kochar, for the Appellant; Neeraj Ashar, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—By this petition under Article 227 of the Constitution of India the petitioner is challenging the validity of the order dated 3-5-2011 passed by learned 3rd Civil Judge Class I Sagar in C.S. No. 32-A/10 whereby application under Order 1 Rule 10 of the CPC filed on behalf of the petitioner/objector to be impleaded as defendant has been rejected. No exhaustive statement of facts are required to be narrated for the disposal of this petition. Suffice it to say that a suit for eviction on the ground envisaged u/s 12(1)(a) of the M. P. Accommodation Control Act, 1961 (in short "Act") has been filed by the plaintiff/respondent No. 1 Shobna Mishra arraying Mahendra Kumar and Purshottam @ Munnalal as defendants. According to plaintiff, first defendant/Mahendra Kumar is the tenant while second defendant Purshottam @ Munnalal is his sub-tenant. This suit is pending and during the pendency of it, an application under Order 1 Rule 10 of the CPC has been filed by the present petitioner/objector to implead him as defendant and that application has been rejected by the impugned order.

2. The contention of Shri Sankalp Kochar, learned counsel for the petitioner is

that earlier a Civil Suit No. 6-A/08 was filed for title in which the present petitioner was arrayed as defendant and plaintiff was Laxman Prasad. That suit was decreed on 17-12-2008 by learned 3rd Additional District Judge Sagar in favour of Laxman Prasad. However, First Appeal (FA No. 73/09 Diwakar Rao Gurjar vs. Laxman Prasad Balaiya and another) is pending before this Court. In this first appeal, vide order dated 16-3-2009, an interim order was passed directing the parties not to alienate the suit property. Learned counsel for the petitioner further submits that the present suit has been filed by Smt. Shobna Mishra for eviction on the relationship of landlord and tenant on certain grounds envisaged u/s 12(1)(a) of the Act and therefore, since Smt. Shobna Mishra is stepping in the shoes of Laxman Prasad against whom the fight is still going on in the first appeal therefore the petitioner is a necessary party in this suit for eviction filed against the tenant by present plaintiff Smt. Shobna Mishra.

3. Shri Neeraj Ashar, learned counsel for plaintiff/respondent No. 1 has argued in support of the impugned order and submitted that cogent reasons have been assigned by the learned trial Court while rejecting the application, therefore, this petition be dismissed.

4. Having heard learned counsel for the parties, I am of the opinion that the petition deserves to be dismissed.

5. It is not disputed that in C.S. No. 6-A/08 a decree has been passed on 17-12-2008 in favour of Laxman Prasad and against the present petitioner Diwakar Rao who was arrayed as defendant in that suit. In the judgment and decree dated 17-12-2008, the rights of Laxman Prasad and present petitioner/objector have been determined and it has been held that Laxman Prasad is the owner of the suit property on the basis of a valid Will in his favour. After the suit was decreed in favour of Laxman Prasad on 17-12-2008, he vide registered sale deed dated 2-4-2009 sold the disputed property in favour of present plaintiff Smt. Shobna Mishra who has presently filed the suit for eviction on the grounds envisaged u/s 12(1) of the Act. According to me, merely because some interim injunction has been granted against the vendor of the plaintiff not to alienate the suit property in the first appeal filed by present petitioner, would not mean that the present petitioner/objector who lost earlier in C.S. No. 6-A/08 would become necessary a party in this suit.

6. The rights of Laxman Prasad (vendor of present plaintiff Smt. Shobna Mishra) and present petitioner/objector have been finally determined by the Civil Court holding that Laxman Prasad is the sole owner of the suit property on the basis of a Will executed in his favour and accordingly Laxman Prasad's suit (Civil Suit No. 6-A/08) has been decreed on 17-12-2008. In these state of affairs the title of present petitioner/objector in the suit property now cannot be decided, because the earlier aforesaid decision would operate as res judicata in the present case. I do not find any merit in the contention of learned counsel for the petitioner/objector that the first appeal against the said decree is pending in this Court, therefore, present petitioner is a necessary party in the civil suit. According to

me, even if the appeal is pending still the judgment and decree dated 17-12-2008 would operate as res judicata. In this regard Explanation II to section 11 CPC is quite clear. It would be profitable to quote that Explanation which reads thus -

Explanation II. -- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

No decision is needed in this regard, but for the ready reference I may rely the decision of the Supreme Court *Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu (Dead)* by L. Rs.,

7. Since the judgment and decree passed against the present petitioner would operate as res judicata and until and unless the said decree is set aside, it cannot be said that present petitioner/objector is a necessary party in the instant suit of eviction filed against the tenant. If the present petitioner is arrayed as defendant in the suit, there shall be a triangular fight and apart from proving the grounds u/s 12(1) of the Act, the plaintiff would require to contest her suit against the petitioner to prove her title on the suit property which she is not suppose to prove because the rights of objector and the vendor of plaintiff have already been determined earlier by Civil Court and the judgment and decree dated 17-12-2008 would operate as res judicata therefore, according to me, at present petitioner/objector cannot be permitted to implead as defendant. However, the present petitioner/objector may file fresh application in case first appeal is decided in his favour.

8. I have gone through the reasonings given by the learned Trial Court while rejecting the application under Order 1 Rule 10 of the CPC filed by the petitioner/objector and I find them to be quite cogent and I do not find any ground to interfere in it. Resultantly, this petition fails and is hereby dismissed with the aforesaid observations. No costs.