
(2014) 05 MP CK 0004
In the Madhya Pradesh High Court
Case No : WP No. 2479/2014

Dr. Rajendra Singh and Others

APPELLANT

Vs

Dr. Shanti Raghuvarshi and Others

RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 108

Citation : (2014) 05 MP CK 0004

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Sanjay Sharma, Advocate for the Appellant; D.K. Agarwal, Advocate for Respondent No. 1, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—The petitioners/plaintiffs filed a suit for declaration and permanent injunction in the year 2001. The said suit was decreed on 06th February, 2003 in favour of the plaintiffs. The respondents/defendants filed F.A. No. 96/2003 before this Court. This Court, by order dated 18.06.2013 set aside the judgment and decree aforesaid and directed the trial court to rehear the suit in accordance with law. In turn, the Court below started hearing the suit afresh. An application under Order 6 Rule 17 C.P.C. (Annexure P/5) is filed by the petitioners on 09.04.2014. Respondents filed their reply and prayed for rejection of this application. The Court below heard the parties on the said application and decide it by the impugned order 11.04.2014. This order is called in question in this petition under Article 227 of the Constitution.

2. Shri Sanjay Sharma, learned counsel for the petitioners, submits that amendment proposed is necessary for lawful adjudication of the matter. Amendment will not change the nature of the case but will only strengthen the pleadings and therefore, it should have been allowed.

3. Prayer is opposed by Shri D.K. Agarwal, learned counsel for the respondent. He submits that belated amendment is rightly rejected by the court below.

4. I have heard learned counsel for the parties and perused the record.

5. By way of amendment application, the plaintiffs contended that Hanumant Singh husband of defendant No. 3 is not seen for more than 12 years. Accordingly, it can be presumed that he is no more. However, in the amendment application it is not mentioned as to why this assertion is required or relevant for lawful adjudication of the matter. The submission of Shri Sanjay Sharma is based on Section 108 of the Evidence Act. Presumption of death, as per said provision, can be drawn after seven years. The application is filed after more than 12 years. There is no explanation of delay in filing the said amendment application. The Court below has rejected the application on the ground of delay as well as on the ground of justifiability. The question is whether the finding of court below is liable to be interfered with.

6. The Apex Court in *Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka and Others*, opined that moreover, before the institution of the suit in the year 2010, the plaintiffs allegedly came to know about the conveyance deed dated 08.02.1989, sometime in the year 2009, but relief was not sought for in the plaint which was filed much more later i.e. 14.10.2010. The High Court has not considered these undisputed facts and passed the impugned order on the general principles of amendment as contained in Order 6 Rule 17 C.P.C. There is no ground for allowing the amendment sought for by the plaintiffs which was not only a belated one but was clearly an afterthought for the obvious purpose to avert the inevitable consequence.

In the present case also the amendment is clearly an afterthought and there is no explanation for filing the application belatedly. The Court below has taken a plausible view in rejecting the amendment application.

7. The Apex Court in *Jai Singh and Others Vs. Municipal Corporation of Delhi and Another*, opined as under:-

The High Court, under Article 227 of the Constitution of India, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in the matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognized constraints. It cannot be exercised like a "bull in a china shop",

to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

The same view is taken by the Supreme Court in *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, .

8. If the impugned order is tested on the anvil of principles laid down by the Supreme Court, it will be clear that there is no jurisdictional error in the order. The Court has taken a possible view. There is no procedural impropriety or perversity which warrants interference in these proceedings. Resultantly, no case is made out for interference.

9. Petition is dismissed. No costs.