
(2012) 03 MP CK 0112
In the Madhya Pradesh High Court
Case No : S.A. No. 143 of 2008

Ghasiram and Others

APPELLANT

Vs

Keshar Singh and Others

RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 3, Order 22 Rule 9
Limitation Act, 1963 — Section 5

Citation : (2012) 03 MP CK 0112

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Shri Justice N.K. Mody

1. Being aggrieved by the judgment dated 3/12/07 passed by ADJ, Agar in Civil Appeal NO. 36-A/05 arising out of judgment dated 5/9/05 passed by Civil Judge class-II, Agar in civil suit No. 11-A/05 whereby the suit filed by the appellants was dismissed as abated, was maintained, the present appeal has been filed.

2. Short facts of the case are that Rajaram, Kanhaiyalal and Atmaram whose L.Rs. are the appellants filed a suit for declaration on 12/11/87 alleging that land measuring 8.476 Hecatares bearing various survey numbers situated at village Kanad Pargana, District Agar. It was alleged that Chandarsingh, Kesharsingh and Siddhibai, original defendants of respondent Nos.1 to 3 are owner of 1/3rd share in the suit land and Shivnarayan and Onkarsingh, original defendants of respondent Nos.4 and 5 are also entitled for 1/3rd share while rest of defendants i.e. Sonibai, Sodharabai, Bhawarlal, Narayansingh, Chandarsingh and Mangilal are entitled for remaining 1/3rd share in the suit property. It was alleged that vide sale deed dated 19/6/54, Devisingh who was predecessor-in-title of Sonibai, Sodharabai, Bhawarlal and Narayansingh and Onkarsingh who was predecessor-in-title of Chandarsingh and Mangilal sold their 1/3rd share to Rajaram for consideration of Rs. 300/-and also put Rajaram in possession. It was alleged that

Rajaram/plaintiff No. 1 and Kanhaiyalal/plaintiff No. 2 are the real brothers. It was alleged that defendant Nos.6 to 11 were not in possession of any part of the property. It was alleged that Rajaram and Kanhaiyalal were cultivating land jointly and were also living together. The property was purchased by both of them jointly. Since Rajaram was elder brother, therefore property was purchased in his name. It was alleged that Devisingh, father of Shivnarayan and Onkarsingh also sold their 1/3rd share and one field vide sale deed dated 20/6/55 for consideration of Rs. 300/-and also handed over the possession. It was alleged that defendant Nos.1 to 3 i.e. Chandarsingh, Kesharsingh and Siddhibai are in possession of 1/3rd share of suit land and rest of land is in occupation of plaintiffs I.e. Rajaram, Kanhaiyalal and Atmaram whose L.Rs. are the appellants. It was alleged that it be declared that Rajaram is having 1/6th share while Kanhaiyalal is having 1/3rd share and Atmaram is having 1/6th share in the suit property and rest of the respondents are having no right, title or interest in the suit property. The suit was contested by the respondents. After framing of issues and recording of evidence vide judgment dated 25/7/90, the suit filed by the above named plaintiff whose L.Rs. are the appellants, was dismissed, against which an appeal was filed which was numbered as 46-A/90 and vide judgment dated 18/12/91 passed by II ADJ, Shajapur allowed the appeal and remanded the case. During pendency of suit before the learned trial court, applications were filed on 21/11/2000 under Order XXII Rule 3, Order I Rule 10 and Order XXII Rule 9 CPC and section 5 of the Limitation Act wherein it was alleged that on 8/2/94, Rajaram died and Kanhaiyalal died on 8/2/95, therefore their Legal Representatives be taken on record and delay in filing the applications be condoned and also abatement be set aside. The applications were opposed by the respondents. After holding a summary enquiry learned trial court dismissed the application vide order dated 5/9/05, against which an appeal was filed which was also dismissed, hence this appeal.

3. Learned counsel for appellants submits that impugned judgment passed by learned courts below are illegal and deserve to be set aside. It is submitted that in the facts and circumstances of the case learned courts below ought to have allowed the appellants to bring the L.Rs. on record and delay in filing the applications ought to have been condoned. It is submitted that appeal be allowed and impugned judgment passed by learned courts below be set aside.

4. From perusal of record it is evident that Rajaram and Kanhaiyalal died on 8/2/94 and 8/2/95 respectively while the applications were filed after more than 5 years. No cogent reason was assigned for inordinate delay in filing the applications. Keeping in view the facts and circumstances of the case, this court is of the view that no case for interference is made out, hence the appeal stand dismissed.