
(2008) 09 MP CK 0058
In the Madhya Pradesh High Court
Case No : M.A. No. 2108 of 2007

Girja Shankar and Others

APPELLANT

Vs

Smt. Shanti Bai and Others

RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Citation : (2011) ILR (MP) 1516

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.—This appeal is directed by the appellants -defendants under Order 43 Rule I (u) of the CPC being aggrieved by the judgment and decree dated 23.2.07 passed by the Additional District Judge (Fast Track), Amarpatan, District Satna in Civil Appeal No. 99-A/06 whereby setting aside the judgment and decree dated 31.8.05 passed by the Civil judge, Class-11, Amarpatan, District Satna in Civil Original Suit No. 32-A/05 dismissing the suit of the respondent no. 1 to 3 for declaration, partition and separate possession, remanded the suit to the trial court with a direction to decide afresh after impleading Kamla Bai and Kalabai, the daughters of late Chandrika Prasad and such other persons, having rights in the disputed property and extending them the opportunity to file written statements, document and adduce evidence.

2. The appellants herein have challenged the aforesaid judgment and decree of the appellate court remanding back the case to the trial court on various grounds mentioned in the appeal memo.

3. In the course of arguments on merits, on making some query from the appellants' counsel he fairly conceded that being daughters of Chandrika Prasad said Kamla Bai and Kalawati Bai since dead her legal representatives are necessary parties to adjudicate and passing the effective decree in the aforesaid suit. He further said that the impugned suit has not been filed by the respondent

no. 1 to 3 within limitation and such question was not properly considered by the appellate court while passing the impugned judgment and decree. In addition, it was argued that in case if this appeal is dismissed, then in such circumstance by appropriate directions the trial court be directed to conclude the trial expeditiously on some early date. In such premises, he prayed for allowing this appeal and in alternative prayed for appropriate direction to the trial court for early disposal of the suit.

4. On the other hand Shri B.K. Singh learned counsel of respondent no. 1 to 3 while responding the arguments said that in the absence of aforesaid Kamla Bai and the legal representative of Kamla Bai who have right and interest in the disputed property, no effective decree could be passed either by the trial court or the appellate court. In such premises, appellate court has not committed any error either in setting aside the impugned judgment of the trial court or in remanding the matter to the trial court with the aforesaid directions. In such premises, the impugned judgment and decree do not require any interference at this stage and prayed for dismissal of this appeal.

5. Having heard counsel for the parties, I have gone through the impugned judgment as well as judgment of the trial court and also perused the record of both the courts below. It is apparent that the respondent no. 1 to 3 herein filed the suit against the appellants and the respondent no. 4 for declaration, partition and separate possession of their ancestral landed property. On the pleadings of the plaint it appears that the provisions of the Hindu Succession Act are applicable to the parties and according to such provision the daughters of late Chandrika Prasad, the sisters of appellants namely Kamla Bai and Kalawati had their right and interest in such property as they inherited the same from late Chandrika Prasad. In the course of arguments it was pointed out that Kalawati had passed away and her son is alive.

6. In view of the aforesaid discussion said Kamla Bai and legal representative of Kalawati appear to be the necessary parties in the suit and in their absence no effective decree could be passed.

7. It is settled proposition of law that the person in whose absence the effective decree could not be passed is a necessary party of the suit. As laid down by the Full Bench of this Court in the matter of Parma and another Vs. Jeewanlal and another 1976 J LJ 84. Such principle is directly applicable to the case at hand. In such premises, it could be said that the trial court had committed error in adjudicating the suit without impleading Kamla Bai and Kalawati or her legal representatives in the suit who were the necessary parties for passing the effective decree. Thus, the appellate court has not committed any error in rejecting such application and remitting back the matter to the trial court by the impugned judgment. In such premises the approach of the appellate court appears to be correct and in accordance with law. It does not require any interference at this stage.

8. Under the aforesaid premises, I have not found any merits in this appeal. Thus, by affirming the impugned judgment and decree the same is hereby dismissed.

There shall no order as to the costs.

9. However, the trial court is directed to proceed with the trial of the aforesaid civil suit expeditiously and conclude the same on or before 30.9.09 under intimation to this court.

The appeal is dismissed with aforesaid observation.

10. Let the record of the courts below be sent immediately and the parties are directed to remain present before the trial court on 13.10.08 for assisting in disposing of the suit in accordance with the direction of the appellate court within the aforesaid period.