

(2006) 04 MP CK 0127
In the Madhya Pradesh High Court
Case No : M.A. 18/04

Govind Das and Another

APPELLANT

Vs

Vikram Singh and Others

RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 1, Order 2 Rule 2, 10, 12

Citation : (2006) 3 MPJR 56

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

Bench : Single Bench

Advocate : Raja Sharma with Mr. A.V. Bharadwaj, for the Appellant; R.P. Singh, Advocate, with Mr. Shishir Saxena, Advocate for respondents No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mody, J.

Being aggrieved by judgment and decree dated 31.10.2003 passed by Second Additional District Judge, (Fast Track Court), Datia in Civil Appeal No. 1-A/99 whereby the order dated 17.11.1998 passed by Civil Judge, Class I, Bhandar, district Datia in Civil Suit No. 40-A/93 was set aside and the case was remanded back to the trial Court, the present appeal has been filed.

Short(s) facts of the case are that respondents No. 1 and 2 filed a suit against present appellants and respondents No. 3 and 4 for declaration of rights and cancellation of judgment and decree dated 29.09.84 passed in Civil Suit No. 14-A/84 by Civil Judge, Class I, Bhandar, wherein a compromise decree was passed in favour of the appellants. The case was contested by the present appellants on various grounds. On the basis of pleadings issues were framed. Out of which issues No. 7 and 8 were dealt with as preliminary issues. Vide order dated 17.11.1998 the learned trial Court found that the suit is not maintainable, hence dismissed the suit. The lower appellate Court found that the learned trial Court

committed error in dismissing the suit and allowed the appeal and set aside the judgment and decree passed by the trial Court and remanded the case back for deciding the same afresh.

Learned counsel for the appellants submits that the respondents No. 1 and 2 earlier also filed a civil suit wherein the validity of the decree dated 29.09.02.84 passed in Civil Suit No. 14-A/84 was challenged. The suit was registered as Civil Suit No. 20-A/87 and was dismissed in default vide order dated 16.08.1989 by Civil Judge, Class I, Bhandar. Thereafter, a restoration application was filed by respondents No. 1 and 2 which was numbered as 6/ 89 and was also dismissed in default vide order dated 23.04.1992. It is submitted that in view of this the learned trial Court has rightly held in the subsequent suit that for the same relief the suit shall not be maintainable u/s 12 CPC. Learned counsel submits that in the circumstances learned lower appellate Court has committed error in remanding the case for fresh decision. Reliance is placed on the decision in the matter of Hari Ram Vs. Lichmaniya and Others, , wherein Rajasthan High Court while considering sections 10,11 and 12 and order 2 Rules 1 and 2 CPC has held that fundamental aim and object is to avoid multiple suits may it be founded on same subject-matter. Section 12 bars the plaintiff from instituting "further suit" based on and in respect of such cause of action, which was cause of action in earlier suit. Section 10 CPC says "Court shall not proceed with the trial," section 11 CPC says "the Court shall not try any suit or issue." It was further observed that once suit is filed in Court, as far as possible dispute between the parties must be settled completely, which will be not only in the interest of the parties to the suit, but it will be in favour of public interest also as it will avoid dragging of the parties to Court again and again, it will save the precious time of the Courts, it will avoid multiplicity of suits, it will result in avoiding conflicting judgments and orders and it will settle the dispute once for all. By this time the Court can be made available for deciding bonafide litigation instead of Court's becoming tool in the hands of litigant to provide litigant mould the proceeding of trial of suites to keep the dispute alive for indefinite period and to compel other party to file another suit for the decision on the issues, which were already subject matter in issues in the suit.

Shri R.P. Singh, learned counsel for respondents No. 1 and 2 submits that Smt. Kasturibai, was the mother of respondent No. 4. The decree was obtained by the appellants in compromise against the mother of respondent No.4 and also against mother of respondents No. 1 and 2. It is submitted that the earlier suit bearing No. Civil Suit No. 14-A/84 was filed by the next friend as respondents No. 1 and 2 were minor. It is submitted that the application for restoration was also filed by the next friend, which was also dismissed in default. It is submitted that issues No. 7 and 8 were framed as preliminary issues which reads as under :-

Issue No. 7 - "Whether the suit filed by the plaintiff is beyond limitation ?"

Issue No. 8 - "Whether principles of resjudicata applies in the present case ?"

It is submitted that no plea was taken by the appellant that suit is barred u/s 12 CPC nor any issue was framed in this regard. It is submitted that in view of this the learned Court below has rightly set aside the impugned order and has remanded back the case to the trial Court.

From perusal of the record it appears that there was no issue relating to section 12 CPC which reads as under:-

12. Bar to further suit- Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

In view of this the appeal has no force and is hereby dismissed. The learned trial Court is directed to dispose of the suit as directed by the lower appellate Court at the earliest within a period of six months from the date of first appearance of the parties.

Parties are directed to appear before the trial Court on 8th of May 2006. Record be sent back.