
(2017) 04 MP CK 0068
In the Madhya Pradesh High Court
Case No : 369 of 2016

Gyanendra Singh Kushwaha

APPELLANT

Vs

State of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 11](#)/
[Order 7 Rule 11](#) - Res Judicata

Citation : (2017) 04 MP CK 0068

Hon'ble Judges : Sujoy Paul

Bench : Single Bench

Advocate : S.P. Mishra

Final Decision : Dismissed

Judgement

1. This civil revision is directed against an order dated 20.08.2016 (Annexure-A/1), whereby the application preferred by the applicant/defendant No.9 under Order 7 Rule 11 of Code of Civil Procedure is dismissed by the Court below.

2. The plaintiff filed a suit for declaration and permanent injunction. The present applicant/defendant No.9 filed an application under Order 7 Rule 11 of CPC. In the said application, it is stated that in relation to subject matter of present civil suit, another Civil Suit No.92-A/2014 was instituted before the Civil Judge Class I, Singrauli, which was dismissed on 30.10.2014. The plaintiff has filed the civil suit by suppression of certain material facts. The valuation of the suit is also not proper. Lastly, it is stated that the plaintiff has sold certain pieces of land to defendant No.9 on 08.07.2004 and this fact has been suppressed by the plaintiff in the civil suit.

3. The respondent-plaintiff denied the averments and the Court below after hearing the parties passed the impugned order. The Court below opined that aforesaid Civil Suit No.92-A/2014 was dismissed in default and such decision does not fall within the ambit of ???heard and finally decided???. Hence Section

11 of Code of Civil Procedure is not attracted.

4. So far aspect of valuation is concerned, the Court below opined that valuation and other averments which are flowing from the plaint averments are to be seen. In other words, at the stage of deciding the application under Order 7 Rule 11 of Code of Civil Procedure, the Court is required to examine the matter on the basis of plaint averments and it cannot travel beyond the same. This view is consistently taken by the Supreme Court in various cases and followed by this Court in case of Neelam Kumar Kumar Bachani and another Vs. Bhishamlal, 2013 (4) MPLJ 117. There is no legal flaw in the said findings.

5. Shri Mishra, learned counsel for the applicant, during the course of argument, relied on the case of T. Arivandandam Vs. T.V. Satyapal and another, 1977 (4) SCC 467. The principles laid down in the said case cannot be doubted but the applicant is unable to show that as per the plaint averments, it was a case of manifestly vexatious and meritless suit on the part of the plaintiff. In absence thereof, the said judgment is of no assistance to the applicant. The Court below has passed impugned order in accordance with law. No manifest procedural impropriety or palpable perversity in the order is shown. No case is made out for exercising revisional jurisdiction. Hence, interference is declined.

6. Revision is dismissed.