

(2020) 06 MP CK 0156

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 5208 Of 2019

Harish Kumar S/o late Shri Jagannathji Umrao

APPELLANT

Vs

Rameshchandra S/o late Shri Jagannathji Umrao

RESPONDENT

Date of Decision : 05-06-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 24, 151
Constitution Of India, 1950 — Article 227

Citation : (2020) 06 MP CK 0156

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : Anand Kumar Nalwaya

Final Decision : Dismissed

Judgement

1. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 26.8.2019 passed by the District &

Sessions Judge, District-Indore by which learned Judge has dismissed the application under Section 24 read with Section 151 of the CPC preferred by the petitioner.

2. The petitioner has filed an application under Section 24 read with Section 151 of CPC on the ground that, disposed civil Suit No.31-A/2002-2005 the

lower court has passed a decree of partition on 25.1.2005. Against the said judgment and decree, the judgment dator has filed First Appeal No.

293/2005 before this Court. During the pendency of this First Appeal an execution proceeding has been filed by the respondent. On the basis of

preliminary decree, the trial court without passing any final decree and without passing any possession warrant which was challenged by the petitioner

before this Court in which the High Court has observed that it is settled law that

possession warrant can be issued only after framing of final decree

after the preliminary. Therefore, this Court has directed the lower Court to pass a final decree before executing the possession warrant. The

petitioner, therefore, filed an application under Section 24 read with Section 151 of the CPC before the learned District & Sessions Judge, Indore to

transfer the case before another court because the impugned order is illegal and contrary to the order passed by this Court. The trial Court has

dismissed the said application vide its impugned order dated 26.8.2019. Being aggrieved with the said impugned order, the petitioner has filed the

present petition.

3. Heard the learned counsel for the petitioner and also perused the record.

4. In the present case, an application has been filed by the petitioner under Section 24 read with Section 151 of the CPC for transfer of the case from

XIVth Additional District Judge, Indore to some other court.

5. On perusal of the record, it reveals that the application preferred by the petitioner under Section 24 read with Section 151 of the CPC is disposed of

on 26.8.2019. The main ground which is taken by the petitioner in the application filed under Section 24 read with Section 151 of the CPC is that the

XVIIth Additional District Judge, Indore has been transferred and another Presiding Officer has been posted in his place. In the light of the fact that

the Presiding Officer has been transferred, there is no case made out, for transferring the case filed under Section 24 read with Section 151 of the

C.P.C.

6. On considering the aforesaid facts and circumstances of the case. no case is made out for interfering with the impugned order passed by the court

below. Accordingly, the present petition stands dismissed as such.