
(2010) 07 MP CK 0029
In the Madhya Pradesh High Court
Case No : S.A. No. 703 of 2008

Kamlabai Choudhary

APPELLANT

Vs

Gangaram Bagri and Others

RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 9

Citation : (2011) 2 MPLJ 451

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

Bench : Single Bench

Judgement

N.K. Mody, J.

Being aggrieved by the order dated 19-8-2008 passed by I Addl. District Judge, Ujjain in Civil Appeal No. 20-A/2007, whereby order dated 17-2-2007 passed by Civil Judge Class II, Ujjain in Civil Suit No. 199-A/2006, whereby application filed by the Respondents under Order 7, Rule 11, CPC was allowed and the suit filed by the Appellants was dismissed, was maintained, the present appeal has been filed.

Appeal is admitted for final hearing on the following substantial questions of law

1) Whether in the facts and circumstances of the case learned trial Court was justified in dismissing the suit upon filing of application under Order 7, Rule 11, Code of Civil Procedure?

2) Whether in the facts and circumstances of the case learned Appellate Court was justified in confirming the order passed by the trial Court?

With the consent of the parties appeal is heard on merits.

Short facts of the case are that Appellants filed a suit on 15-5-2006 for declaration and permanent injunction alleging that Appellants are the real brothers and deceased Nandram is the brother and Appellants and deceased Nandram are the legal representatives of deceased Bherulal being sons and

daughters. It was alleged that Respondents No. 2 to 10 are the legal representatives of deceased Nandram. In the suit it was alleged that land bearing Survey No. 230 situated at village Ghatia belongs to Appellants and deceased Nandram being legal representatives of deceased Bherulal. It was alleged that in the revenue record mistakenly in the year 1972-73 part of the land of plot No. 66 of Survey No. 238 was recorded in the name of Respondent No. 1. In the suit it was prayed that it be declared that Appellants are Bhumiswami and is in occupation of land and Respondent No. 1 be restrained not to interfere with the possession of the Appellants and Respondents No. 2 to 10. After service an application was filed by the Respondent No. 1, wherein it was alleged that keeping in view the relief claimed by the Appellants the Civil Court is having no jurisdiction u/s 9, Code of Civil Procedure. It was prayed that suit filed by the Appellants be dismissed. The reply was submitted by the Appellants. After hearing the parties learned trial Court allowed the application and dismissed the suit against which the appeal was filed, which was also dismissed, hence this appeal.

Shri R. S. Trivedi, learned Counsel for the Appellants, submits that impugned order passed by the learned Courts below is illegal, incorrect and deserves to be set aside. It is submitted that appeal filed by the Appellants be allowed and the impugned order be set aside.

Shri M.A. Bohra, learned Counsel for the Respondent No. 1, submits that no illegality has been committed by the learned Courts below in passing the impugned order. It is submitted that appeal filed by the Appellants be dismissed.

After taking into consideration all the facts and circumstances of the case this Court is of the view that it was not the case of Respondent No. 1 that the suit filed by the Appellants is barred under the provisions of M.P. Land Revenue Code. Section 9, CPC gives jurisdiction to Civil Court to decide every nature of suit except their cognizance is expressly or impliedly barred. Apart from this no written statement has been filed by the Respondent No. 1. It is only an application, which was filed by the Respondent No. 1 under Order 7, Rule 11, CPC and on that basis only learned Courts below dismissed the suit filed by the Appellants. In the facts and circumstances of the case this Court is of the view that the impugned order passed by the learned Courts below is illegal and the same deserves to be set aside. In view of this appeal filed by the Appellants is allowed and the impugned order is set aside and the case is remanded to the trial Court with a direction that Respondent No. 1 shall file written statement, wherein Respondent No. 1 shall be at liberty to raise a ground that the suit filed by the Appellants is barred by law. If such a plea is taken then while framing the issues learned trial Court shall take into consideration this aspect that if any legal issues is framed regarding maintainability of the suit then the same be framed as preliminary issue. Parties are directed to appear before the trial Court on 28-7-2010.

With the aforesaid observations appeal stands disposed of.