
(2016) 01 MP CK 0049
In the Madhya Pradesh High Court
Case No : First Appeal No. 507 of 2012

Keshar Bai (dead) Through LRs. Smt. Asha Bai	APPELLANT
Vs	
Savita Awasthy	RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

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

Citation : (2016) 1 MPWN 143

Hon'ble Judges : Rajendra Menon and S.K. Pola, JJ.

Bench : Division Bench

Advocate : Surendra Verma, Advocate, for the Appellant; None for the Respondent, for the Respondent

Final Decision : Disposed Off

Judgement

1. As a very short question is involved in this appeal in as much as the suit in question has been dismissed for non payment of Court fee, we deem it appropriate to dispose of the matter at this stage as any further delay in disposal of appeal, may cause injustice to the parties concerned.

2. Original plaintiff Smt. Keshar Bai (now dead) represented by legal heirs in this appeal had filed the suit in question for permanent injunction with regard to house No. 125, 128, and 188-B Street No.3, Sadar, Jabalpur. She filed the suit for declaration and permanent injunction with regard to the sale deed dated 23.6.2008 registered on 23.3.2009 and it was her case that as the sale deed has been obtained by fraud, cheating and on non payment of the consideration in accordance to the agreement, the sale-deed be decreed as null and void.

3. In the suit in question the respondent filed an application under Order 7, Rule 11 (b) of CPC and raised an objection with regard to improper payment of Court fee. It seems that the learned Court below passed an order and directed for payment of Court fee. However, in spite of granting time on three occasion, when the Court fees was not paid, the suit has been dismissed on account of non

payment of Court fee.

4. It is the case of the appellants now before this Court that the original plaintiff Smt. Keshar Bai at the time of institution of suit was more than 75 years of age and on 7.10.2011 when the Court had granted 15 days time to pay the Court fee, she could not arrange amount for payment of Court fee as she was not well. When the case was taken up on 9.12.2011 on oral instructions counsel for Smt. Keshar Bai prayed for time to pay the court fee and intimated the Court that plaintiff is not well and has been hospitalized in Nagpur but the Court below disbelieved the same on account of want of adequate documents in support thereof and the learned Court below dismissed the suit. Now, from the material available on record and from the documents that are filed, we found that suit was dismissed on 9.12.2011. Smt. Keshar Bai died on 23.12.2011 and therefore, contention of the plaintiff that Smt. Keshar Bai was not well and it was because of this reason that they wanted time to pay the Court fee, seems to be correct.

5. It is a case where the learned Court below should have granted opportunity to the appellants allowing Smt. Keshar Bai some time to pay the Court fee and in case she was actually sick, some time should have been granted to her or the counsel to file the evidence about her ailment and her inability to pay the Court fee instead of dismissing the suit. Dismissal of suit without affording opportunity had caused serious prejudice to the plaintiffs which requires correction.

6. Keeping in view the aforesaid, we allow this appeal. Impugned judgment and decree passed dismissing the Civil Suit No.24A/2011 which was pending in the Court of 8th Additional District Judge, Jabalpur is set aside, the suit is restored to its original file and it is directed that appellants shall now appear before the Trial Court on or before 29th February 2016 and pay all the Court fee as directed by the Court and on the same being done, the suit shall be restored to its original file and the Court below shall proceed in accordance with law. However, it is made clear that failure on the part of appellants to pay the Court fee on or before 29th February 2016, the suit shall be deemed to have been dismissed and no further opportunity shall be granted to the appellants to pay the Court fee.

7. During the pendency of this appeal an application under Section 10 read with Section 151 has been filed. As we are disposing off the appeal, it is not necessary now to decide the said application. Instead liberty is granted to the appellants to move an appropriate application before the Court below in this regard in view of the judgment passed today.

8. Appeal shall stand allow and dispose off.

9. Record received from the Court below be transmitted back forthwith.

10. No order on cost.