
(2013) 11 MP CK 0150
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8130/2012

Madanmohan

APPELLANT

Vs

Kabulbai

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2014) 2 MPHT 386 : (2014) 2 MPLJ 600

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Mody, J.—Being aggrieved by the order dated 21-6-2012 passed by Civil Judge, Class II, Sanawad in Execution Case No. 9/09 whereby application filed by the petitioner u/s 151, CPC was dismissed, present petition has been filed. Short facts of the case are that in execution petition filed by respondent an application was filed by the petitioner wherein it was alleged that since there was no interim injunction against the petitioner in civil suit, therefore, petitioner has constructed three storied house on the suit property, therefore, now at this stage the execution of decree is not possible. In the application, it was prayed that respondent be compensated by payment of compensation, therefore, the amount be determined, which can be paid to the respondent. The application was opposed and was dismissed, hence this petition.

2. Facts of the case are that civil suit was filed by the respondent in the year 1987, which was numbered as Civil Suit No. 23-A/87 and was dismissed on 16-9-05, against which an appeal was filed by the respondent, which was numbered as 41-A/05 and was allowed vide judgment dated 30-4-08 whereby judgment passed -by learned Trial Court was set aside and the suit filed by the respondent was decreed whereby petitioner was directed to remove the construction raised by the petitioner from the land measuring 0.42 meter in width from east to west and 14.50 meter in length from north to south within a period of two months, against the said judgment and decree passed by Appellate

Court, second appeal was filed by the petitioner, which was dismissed. Thereafter, the execution petition has been filed.

3. Learned Counsel for the petitioner argued at length and submits that learned Court below committed error in dismissing the application filed by petitioner. It is submitted that since the petitioner has constructed the house, which is three storied, therefore, in the facts and circumstances of the case the only remedy was to compensate the respondent in terms of money. It is submitted that the petition be allowed and impugned order passed by learned Court below be set aside and the respondent be compensated.

4. Learned Counsel for respondent supports the order and submits that respondent is fighting for the cause right from 1987. It is submitted that after completing of battle of 26 years having a decree in his favour which was confirmed by Hon''ble Apex Court learned Court below has rightly dismissed the application filed by petitioner. It is submitted that the petition filed by the petitioner has no merits and the same be dismissed.

5. In the matter of Pothuri Thulasidas Vs. Potru Nageswara Rao, , Hon''ble Court has held that once decree has become final, it is not open to judgment debtor to plead new facts in execution. He cannot permitted to open fresh round of litigation by pleading any fact contrary to decree. In the matter of Jagpal Singh and Others Vs. State of Punjab and Others, , Hon''ble Apex Court has held that in a case of illegal encroachment on Gram Panchayat Land, Regularising such illegalities cannot be permitted. In the matter of Vedic Girls Senior Secondary School Arya Samaj Mandir, Jhajjar Vs. Smt. Rajwanti and Others, , Hon''ble Apex Court has held that Executing Court is bound to act within the bound of the decree and cannot travel beyond it or to widen its scope. In the matter of Hari Ram Vs. Jyoti Prasad and Another, , Hon''ble Apex Court has observed that encroachment on public street is a continuing wrong. In the matter of Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation and Others, , wherein in a case of multi-storied building in violation of sanctioned plan and Municipal Corporation Act and Municipal Corporation Building Rules, which continued by builder despite stop of work notice and after completion of unauthorised construction work, application moved by builder for its regularisation, Hon''ble Apex Court has held that corporation must demolish unauthorised construction within a month. From perusal of the record, it is evident that there was a lane having five feet in width upon which as per respondent the encroachment was made by the petitioner having width of one foot six inch in complete length of house. In spite of pendency of suit, petitioner did not bother and constructed the house, with the result the lane is narrow down to three feet six inches approximately. At this stage, when respondent is having a decree which is affirmed up to Supreme Court no concession could have been made by the Executing Court, therefore, learned Executing Court has rightly dismissed the application. In view of this, petition filed by the petitioner has no merits and the same stands dismissed.