

(2018) 07 MP CK 0069

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No.3036 Of 2018

Maresh Maheshwari & Ors

APPELLANT

Vs

Shabbir Hussain & Ors

RESPONDENT

Date of Decision : 09-07-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 6 Rule 17

Citation : (2018) 07 MP CK 0069

Hon'ble Judges : S. C. Sharma, J

Bench : Single Bench

Advocate : Durgesh Sharma

Judgement

The present petition has been filed against order dated 19/06/2018 passed in Civil Suit No.44-A/2015 by III Civil Judge, Class-II, Dr. Ambedkar Nagar

(Mhow), Distt. Indore.

The facts of the case reveal that the respondents No.1 to 3 have filed a civil suit before the trial Court claiming declaration and for grant of permanent

injunction in respect of land situated in Village Santer, Kishanganj, Tehsil Mhow and later on an application was preferred under Order VI Rule 17 of

the Code of Civil Procedure, 1908.

The present petitioners were impleaded later on in the civil suit and they filed written statement. After the impleadment of the present petitioners as

respondents, written statement was filed and in those circumstances an application was preferred under Order VI Rule 17 of the CPC for amending

the plaint.

The trial court keeping in view the subsequent events i.e. impleadment of the present petitioners and filing of their written statements has permitted the

allowed the amendment application filed by the plaintiffs.

Learned counsel for the petitioners has argued before this Court that the contents of the amendment application were already on record and therefore, there was no justification in allowing the amendment application. He has also submitted that the nature of the suit is being changed and the amendment application is being filed after commencement of trial.

He has placed reliance upon a judgment delivered in the case of Kushalpal Singh Jadon Vs. Dwarika Prasad Singhal & Anr. reported in 2015 (II)

MPWN 18 as well as in the case of Avinash Kumar Rai Vs. Chhaya Rai & Ors. reported in 2017 (4) MPLJ 555 and his contention is that

amendment application which has been filed subsequently after commencement of trial, should have been dismissed.

This Court has carefully gone through the aforesaid judgments. In the present case facts are altogether different. The present petitioners were

impleaded later on and they became defendants No.4 to 6. Later on they filed written statement and therefore, the necessity arose to amend the
plaint.

The trial Court after taking in to account the subsequent impleadment and filing of their written statement, has allowed the application. In the

considered opinion of this Court, the trial Court was justified in allowing the application. The order passed by the trial Court does not suffer from

jurisdictional error nor from any perversity.

The apex court in the case of Shalini Shyam Shetty Vs. Rajendra Shankar Patil reported in 2010 (8) SCC 329 in paragraph 49 held as under:-

49.Â Â On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227

of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under

these two Articles is also different.

(b) In any event, a petition under Article 227 cannot beÂ called a writ petition. The history ofÂ the conferment of writ jurisdiction on High Courts is

substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed

above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the

orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal

subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of

this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this

regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles

in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can

interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to

exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent

perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles

of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than

the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of

the Constitution by the Constitution Bench of this Court in the case of *L. Chandra Kumar vs. Union of India & others*, reported in (1997) 3 SCC 261

and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code

(Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered

that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is

to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of

justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that

the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the

functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed

for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual

grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality.

In light of the aforesaid judgment as no patent illegality has been committed by the trial court and the order passed by the trial court does not suffer

from any jurisdictional error, this court does not find any reason to interfere with the order dated 19/06/2018.

Â No order as to costs. Certified copy as per rules.