
(2014) 08 MP CK 0048
In the Madhya Pradesh High Court
Case No : W.P. No. 10596 of 2014

Mohd. Ali	Vs	APPELLANT
Munnilal Ahirwar and Others		RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Court Fees Act, 1870 — Section 35

Citation : (2015) 2 MPHT 147 : (2015) 1 MPLJ 364

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : Anoop Saxena, Advocates for the Appellant

Judgement

U.C. Maheshwari, J.—Shri Anoop Saxena, learned counsel for the petitioner. Shri Rahul Jain, learned Govt. Adv. for the State/respondent No. 5. Heard on the question of admission. On behalf of the petitioner/defendant No. 1, this petition is preferred under Article 227 of the Constitution of India, for quashment of the order dated 7-1-2014 (Annexure-P-7) passed by the IIIrd Civil Judge Class-I, Chhatarpur, in Civil Original Suit No. 1A/2014, whereby, in a suit for declaration and perpetual injunction filed by the respondent No. 1/plaintiff by allowing the application filed under some notification issued by the State of M.P. under section 35 of the Court fees Act, he has been exempted to pay the requisite Court fees according to valuation of the suit.

2. Petitioner's counsel after taking me through the petition as well as the papers placed on the record argued that on earlier occasion, the alleged sale deed regarding disputed property was executed by the respondent No. 1 in favour of petitioner and subsequently, the respondent No. 1 filed the impugned suit to declare him to be in possession of such property with a further prayer of declaration to declare the aforesaid sale deed to be ab intio void. In such suit, according to existing provisions, the respondent No. 1 was bound to value the suit and pay the ad valorem Court fees on the valuation of the consideration of

sale deed, the suit has been Rs. 8,00,000/-, the valuation of the consideration of sale deed, but instead to pay the Court fees, accordingly the respondent No. 1 has filed the aforesaid application under section 35 of the Court fees Act for giving exemption from payment of Court fees on the ground that he being from the community of Scheduled Castes, having the income not more than 12,000/- per annum, is entitled for exemption to pay the Court fees under the notification issued under the aforesaid provision. In support of such contention, income certificate issued by the Tehsildar was also produced before the trial Court. On behalf of the petitioner instead to file any reply of such application, such prayer of respondent No. 1 was opposed in the written statement, with the pleading that respondent is having huge property and income. As per case of petitioner, the trial Court without holding any enquiry on such question on the basis of Tehsildar certificate has allowed the impugned application and exempted the respondent No. 1 from payment of requisite Court fees in the suit. With these submissions, he prayed to set aside the impugned order and dismiss the impugned application by admitting and allowing this petition.

3. Having heard the counsel, keeping in view his arguments, I have perused the aforesaid notification as well as the copy of the plaint and other documents placed on the record.

4. I have found that at the initial stage considering the prima facie circumstances regarding income of the respondent No. 1 on the basis of certificate of Tehsildar by allowing the impugned application, he has been exempted from payment of the Court fees. It is true that impugned order allowing the aforesaid application has been passed without extending any opportunity to adduce the evidence to the petitioner in support of the contention stated in this regard in the written statement.

5. In the available factual circumstances as apprised by the petitioner's counsel stated above, at present prima facie I have not found any illegality, irregularity or anything against the propriety of law in the impugned order, on the contrary, it appears that the same has been passed at the initial stage of the suit taking into consideration of aforesaid income certificate of the respondent No. 1 issued by the Tehsildar under its authority, and contrary to that, no any document has been placed on the record on behalf of the petitioner.

6. Simultaneously, I am of the considered view that if on the question of income of the respondent No. 1, some objections have been taken on behalf of the petitioner in the written statement, then the petitioner has a right to adduce the evidence on such question during trial and the trial Court is also bound to consider such question again afresh after recording the evidence on appreciation of the same in the matter at final adjudication of the same. I am of the opinion that mere certificate of the Tehsildar cannot be considered to be a gospel truth regarding income of the respondent No. 1, that document may be considered as prima facie circumstances at the initial stage of the case to permit the respondent No. 1/plaintiff to prosecute the suit further on merit but on

conclusion of trial the trial Court has to consider and decide such question of income on appreciation of the adduced evidence. With these observations at this stage, I do not want to interfere in the impugned order but in view of the existing procedure to decide all the questions of the impugned civil suit, this petition is hereby disposed of with a direction to the trial Court to frame the specific issue on the aforesaid question, besides the other issues, as the same is raised by the petitioner in the written statement as submitted by his counsel. Subsequent to from the opportunity to adduce the evidence be extended to both the parties, and thereafter, the same be decided afresh, without influencing from any findings or the observations made by such Court in the order impugned or by this Court in the present order. Such direction has been given keeping in view the proposition that Civil Court is bound to decide every disputed question raised in such suit by appreciation of evidence recorded in the same.

7. Before parting with the case it is also observed that if the respondent No. 1/ plaintiff is aggrieved by this order or any part of it, then he may approach to this Court with appropriate petition/proceedings for redressal of such grievance. With the aforesaid observations and directions, this petition is disposed of.