
(1976) 08 MP CK 0006
In the Madhya Pradesh High Court
Case No : S.A. No. 133 of 1976

Moolchand Mathuralal

APPELLANT

Vs

Pooranmal kesharilal Saraf and Another

RESPONDENT

Date of Decision : 05-08-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152, 47

Citation : (1978) JLJ 342 : (1978) MPLJ 514 : (1978) MPLJ 505

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Advocate : K.S. Shrivastava, for the Appellant; B.D. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

C.M. Lodha, J.

This case typically demonstrates how a decree lawfully obtained from the Court may be avoided.

Admittedly, Plaintiff Pooranmal obtained a decree for permanent injunction restraining Ramnarayan from raising construction on his property in such a way as to obstruct light and air coming through the windows and ventilators of the Plaintiff's house. When the decree was sought to be executed Moolchand, brother of Ramnarayan, raised an objection u/s 47, CPC that since he was not a party to the suit in which the decree was passed, he was not bound by the decree and the decree cannot be executed against him as he is the co-owner of the suit property. The application was resisted by Respondent Pooranmal, who pleaded that as a matter of fact Moolchand had been impleaded as a Defendant, but his name was inadvertently omitted in the decree-sheet. He also pleaded alternatively, that Moolchand was the brother of Ramnarayan and consequently Ramnarayan must be deemed to be representing Moolchand in respect of the rights of the joint family to the servient tenement.

The objection was dismissed by the trial Court and its order was upheld by the

first appellate Court. Moolchand, thereupon, filed a revision petition in this Court, which was admitted on 28-7-76, and subsequently, he made an application that the revision application may be treated as second appeal and this prayer too was allowed on 6-7-76. The second appeal has come up for admission before me.

Mr. Hardas Gupta, learned Counsel appearing on behalf of Respondent Pooranmal, has opposed the admission of the appeal. Accordingly, I have heard the learned Counsel for both the parties at some length and have come to the conclusion that there is no substance in this appeal. I shall now state my reasons:

(a) There is a clear statement in the order of the trial Court as well as in the order of the first appellate Court that Moolchand was joined as a Defendant in the suit by amendment of the plaint. However, at the time of writing the judgment and framing of the decree the name of Moolchand was inadvertently not mentioned. Nothing has been shown to persuade me to come to a contrary finding. Merely because the name of Moolchand was not shown in the judgment and the decree-sheet, no advantage can be taken out of it as that is only a clerical error, which can be corrected at any time u/s 152, Code of Civil Procedure. In my opinion, this ground in itself is sufficient to reject the Appellant's contention.

(b) Apart from that, it is writ large on the record of the case that Moolchand is brother of Ramnarayan and was living with him. They are members of joint Hindu family and Ramnarayan being the elder brother will be deemed to have represented interests of the joint family in the litigation and consequently Moolchand is bound by the decree.

Moolchand appears to have resorted to this device of flouting the decree by taking advantage of non-mention of his name in the judgment and the decree.

The second appeal has no force and is dismissed summarily. Let the decree be executed forthwith.