
(2006) 07 MP CK 0036

In the Madhya Pradesh High Court

Case No : Writ Petition No. 213 of 2006

Munna Lal and Others

APPELLANT

Vs

Chironjilal and Others

RESPONDENT

Date of Decision : 25-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4(2)

Citation : (2007) 2 MPLJ 104

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : V.K. Bharadwaj, for the Appellant; Mahesh Goyal, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.

Shri V.K. Bharadwaj, learned Counsel for the Petitioners.

Challenging a interlocutory order dated 22-12-2005 Annexure P/1 passed by the Court of Addl. District Judge. Sabalgarh in Civil Suit No. 12-B/05 refusing to take on record a written statement filed by the Petitioners, Petitioners have approached this Court.

Respondents Plaintiff had instituted a suit for recovery of Rs. 4,56,000/- and interest of Rs. 1,24,000/- against one Kedar Nath, father of the present Petitioners. Records indicate that after written statement was filed by the original Defendant Kedar Nath, he expired and, therefore, Petitioners who are sons of late Kedar Nath were brought on record.

After Petitioners were brought on record they again filed a joint written statement Annexure P/5 raising various grounds to indicate that they are not responsible for the liability incurred by their father. Grievance of the Petitioners is that the written statement now filed by the Petitioners is not being taken on record and the same is being rejected only on the ground that in view of the law

laid down by a Bench of this Court in the case of Gajraj v. Sudha, 1999 (11) MPWN 60, written statement cannot be taken on record. Shri Bharadwaj, learned Counsel representing the Petitioner inviting my attention to a judgment of Supreme Court in the case of Jagdish Chander Chatterjee and Others Vs. Shri Kishan and Another, so also a judgment of Supreme Court in the case of Vidyawati Vs. Man Mohan and others, argued that once a person is impleaded as party as a legal heir of the original Plaintiff or Defendant the said person is entitled to make an appropriate defence which is appropriate to his character as legal representative of the deceased Defendant or the Plaintiff as the case may be. It is, therefore, stated by Shri Bharadwaj that in the present case Petitioners hereinabove having denied the liability in the matter of discharge of the liability of their father and as the law permits them to raise such defence learned Court has committed material irregularity in rejecting the written statement without considering the aforesaid legal principle.

Shri Mahesh Goyal, learned Counsel representing the Plaintiff

I have heard learned Counsel for the parties and perused the record.

The suit in question has been filed by Respondent-Plaintiff against Kedar Nath, father of the present Petitioners and from the plaint annexure P/2 it is clear that the suit is filed on the basis of certain amounts said to have been received by Kedar Nath on the basis of a receipt executed in presence of one R.L. Gaud. In his written statement filed before the Court as contained in Annexure P/3 late Kedar Nath had denied the recovery of the amount and has also challenged the receipt filed. After the Petitioners were brought on record they have filed an additional written statement and in the written statement they have denied their liability to discharge the debts of late Kedar Nath. It is their case that during the life time of Kedar Nath, much before his death the entire family property has been partitioned and all the Petitioners are living separately. They have contended that after death of their father they are not liable to repay the debts of their father. They are, therefore, making an independent assertion indicating the fact that they are not legally liable to discharge the debt incurred by their father for various reasons which they have indicated in their written statement.

The question is as to whether Petitioners can be permitted to file a separate written statement and make such an averment. In the impugned order learned Court has simply held that as late Kedar Nath had already filed his written statement now Petitioners cannot be permitted to file a separate written statement contrary to the pleadings made by late Kedar Nath. However, while doing so learned Court in the impugned order has not indicated as to which stand taken by the Petitioners is contrary to the earlier pleadings set out by the original Defendant late Kedar Nath and how the said pleadings cannot be accepted. It seems that learned Court has acted mechanically in the matter and has not examined the legal question in its correct perspective.

In the case of J.C. Chatterji (supra) Supreme Court has considered the question

with regard to the rights available to a person who is impleaded as a party in a proceeding after death of the original Plaintiff or Defendant as the case may be. In para 11 of the aforesaid judgment after considering the provisions of Sub-clause (2) of Rule 4 of Order XXII, CPC it has been held by the Supreme Court that any person who is made a party, as legal representative of the deceased was entitled to make any defence appropriate to his character as legal representative of the deceased person. In the aforesaid para it is so indicated by the Supreme Court in its judgment.

In other words, the heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Indeed this does not prevent the legal representatives from setting up also their own independent title, in which case there could be no objection to the Court impleading them not merely as the legal representatives of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on the independent title.

Similarly, while considering the question again in the case of Vidhyawati (supra) a earlier judgment of Supreme Court in the case of Bal Kishan Vs. Om Parkash and Another, was considered and thereafter law laid down by the Supreme Court in the case of Jagdish Chander Chatterjee (supra) is considered and the view affirmed.

In the present case, learned Court below while rejecting the prayer made for taking the written statement on record has only held that the written statement cannot be taken on record and for doing so has placed reliance on a judgment of Supreme Court in the case of Gajraj v. Sudha (supra). In the aforesaid case Supreme Court has only held that a legal heir cannot take plea inconsistent to that of a predecessor. However, this judgment does not indicate anything to suggest that a legal heir is not entitled to take a defence appropriate to his character as indicated by the Supreme Court in the judgments in the case of J.C. Chatterjee and Vidhyawati (supra). The Court below has not examined the matter in accordance with law. It was incumbent upon the learned Court to examine both the written statements and permit the Petitioners to raise such defence which they could raise in accordance with law keeping in view the defence appropriate to their character as a legal representative.

Learned Court having decided the question without considering the legal principle appropriately it is a fit case where matter should be remanded back to the court below for deciding the question again. Accordingly, this petition is allowed. Order impugned Annexure P/1 dated 22-12-2005 is quashed. Learned Court is directed to re-examine the matter in the light of the legal principles as indicated hereinabove and decide it afresh after giving opportunity of hearing to the parties concerned. Learned Court after examining the pleadings now raised by the Petitioner shall permit the Petitioner to raise such pleadings as are permissible under the law.

Petition stands allowed and disposed of with the aforesaid.

C.C. as per rules.

Petition allowed