
(2014) 05 MP CK 0160
In the Madhya Pradesh High Court
Case No : Writ Petition No. 713/2014

Nandlal and Two Others

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 227

Citation : (2014) 4 MPJR 159

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : M. Bachawat, Advocate for the Appellant; Vinita Phaye, Advocate for Respondent No. 1 and Mrs. Mamta Shandilya, Advocate for Respondent No. 2, Advocate for the Respondent

Final Decision : Allowed

Judgement

Prakash Shrivastava, J.—This Writ Petition under Article 227 of the Constitution of India is at the instance of the plaintiff in the suit challenging the order of the trial Court dated 8/1/2014 whereby the application under Order 1 Rule 10 of the CPC filed by the respondent No. 2 has been allowed.

2. In brief, the petitioner has filed the suit for declaration and permanent injunction claiming that the suit property was received by Daulatram S/o Ramrishna Brahmin from the Holkar State in Inam and by the registered sale deed dated 30th July, 1973, he had sold it to one Kailashdevi and Kailashdevi by sale deed dated 18/6/1975 had sold it to the petitioners but the respondent State had got the name of the Collector mutated in the revenue record.

3. The respondent No. 2 had filed an application under Order 1 Rule 10 CPC stating that the suit property was given in Inam to Daulatram by Holkar State in his capacity as Vachak and that the respondent No. 2 is the son of Daulatram and had hereditary right in the suit property and it could not be sold, therefore, he should be impleaded in the suit and given the opportunity to lead the

evidence. The said application was opposed by the petitioner.

4. The trial Court by order dated 8/1/2014 has allowed the application.

5. Learned counsel for petitioners submits that the respondent No. 2 is not a necessary party in the suit and his presence is not required for the decision of the suit. He has further submitted that the impleadment of the respondent No. 2 will lead to triangular fight.

6. Learned counsel for respondent No. 2 has opposed the writ petition. He has submitted that in view of the judgment of the Supreme Court in the matter of Anant Kibe and Others Vs. Purushottam Rao and Others, the respondent No. 2 has hereditary right in the suit land and that it could not have been sold in favour of the petitioner by Daulatram.

7. Learned counsel for respondent No. 1 State has also opposed the writ petition.

8. I have heard the learned counsel for parties and perused the record.

9. A perusal of the impugned order reveals that the trial Court while passing the impugned order has not considered the issue of triangular fight which was specifically raised by the petitioner before the trial Court. This Court also in the matter of Akshaya Kumar Jain Vs. Mahendra Kumar Jain reported in 1992(1) MPWN 309 has taken a view that addition of party resulting into triangular fight cannot be allowed. The trial Court while passing the impugned order has also not considered the basic concept of the plaintiff being dominus litus.

10. In view of this, the order of the trial Court cannot be sustained and is hereby set aside with direction to the trial Court to decide the application under Order 1 Rule 10 CPC filed by the respondent No. 2 afresh keeping in view the observations made above.

11. The writ petition is accordingly allowed.