
(2014) 08 MP CK 0135
In the Madhya Pradesh High Court
Case No : C.R. No. 353/2014

Prakash Chand Chaturmohta	Vs	APPELLANT
Shikhar Chand Chaturmohta		RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 11

Citation : (2014) 08 MP CK 0135

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Permanand Dubey, Learned Counsel, Advocate for the Appellant

Judgement

K.K. Trivedi, J.—Heard on the question of admission.

2. Being aggrieved by the order dated 21.7.2014 passed in Civil Suit No.165-A/14 by IV Civil Judge Class-II, Balaghat, rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as the CPC for short), this Civil Revision is directed by the applicant/defendant. The respondent No.1/plaintiff has filed a suit seeking relief of permanent injunction and possession. It is contended that a part of the land belonging to the respondent No.1/plaintiff has been encroached upon by the applicant and construction has been started. Objecting to such a prayer, written statement has been filed and it is contended that construction is being done by the applicant on the land belonging to him. An application under Order 7 Rule 11 of CPC was filed on the ground that in the plaint map, the land has not been properly described. No limits or boundaries have been described in the plaint and identity of the land in dispute is not established. The construction was being made by the applicant on his own land, but simply to harass the applicant, the suit has been filed by the respondent No.1/plaintiff. Since the applicant is in possession of the land for more than 30-40 years, the suit filed by the respondent No.1/plaintiff was apparently barred by limitation. The trial Court after considering these objections has rejected the application of the applicant. Hence, this revision.

3. It is contended by learned counsel for the applicant that on a bare reading of the plaint, it is clear that proper averments have not been made with respect to accrual of a cause of action for filing of the suit. On this count alone, the suit was liable to be dismissed. It is also contended that the respondent No.1/ plaintiff is habitual in litigating against the applicant and though construction is being made by the applicant on his own land, to obstruct such construction, a frivolous suit has been filed. As far as the possession part is concerned, it is contended that since the applicant is in possession of the suit land for the last many years, no cause of action accrued to the respondent No.1/plaintiff to file the suit in the near past and, as such, the suit is barred by limitation. All these aspects have not been considered by the Court below and the application under Order 7 Rule 11 CPC has been rejected.

4. If an application under Order 7 Rule 11 CPC is made, the same is to be considered only and only on the basis of the pleadings made in the plaint and defence raised is not required to be seen. It is very categorically contended by the respondent No.1/plaintiff in the plaint that Khasra No.267/2G is belonging to him, over which unauthorisedly construction is being made by the applicant for which an objection has been raised. In fact, pleading as if the construction was being made on land of Khasra No.255/14K, permission was sought by the applicant and an objection to that application has been raised. When the respondent No.1/plaintiff was not available, construction was started by the applicant/defendant, therefore, the suit was required to be filed. These pleadings indicate that as if construction is being made by the applicant on a different land and not on that which belongs to applicant. That being so, unless by evidence it is proved that the construction started by the applicant is only on his own land, issue cannot be adjudicated. Similarly, the cause of action as indicated by the respondent No.1/plaintiff in the plaint is from the date, the construction was started by the applicant and, therefore, prima facie it cannot be said that the suit is barred by limitation. It has to be proved by evidence from which date the applicant was in possession of the land in suit. Even otherwise, if there are discrepancies in the boundaries of the land involved in suit, that can be resorted to only after the demarcation which is required to be done by local authorities. It is not the case that such a demarcation has already been done. That being so, no error of law is committed by the Court below in rejecting the application under Order 7 Rule 11 of CPC made by the applicant.

5. In view of the aforesaid, the revision has no force, the same is liable to be and is hereby dismissed without notice to the other side.