
(2010) 10 MP CK 0074
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4057 of 2010

Rambabu

APPELLANT

Vs

Shrikrishna and Others

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 6 Rule 18
Constitution of India, 1950 — Article 226, 227

Citation : (2011) ILR (MP) 671 : (2011) 1 MPHT 281 : (2011) 1 MPLJ 373

Hon'ble Judges : Brij Kishore Dubey, J;A.K.Shrivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Brij Kishore Dube, J.

Invoking the extraordinary and inherent jurisdiction of this Court under Article 227 of the Constitution of India, the Petitioner/Plaintiff has called in question the defensibility and tenability of the order dated 29th June, 2010 (Annexure P/1) passed by the learned First Additional District Judge, Bhind in Civil Suit No. 21-A of 2009, by which his application filed under Order VI, Rule 18 of the Code of Civil Procedure, has been dismissed and the suit filed by the Plaintiff has also been dismissed.

Shri K.B. Chaturvedi, learned senior counsel for the Petitioner has submitted that the Plaintiff filed an application under Order VI, Rule 17 of the Code of Civil Procedure, which was allowed by the learned trial Court on 13th May, 2010. Thereafter, on 29th June, 2010, the Plaintiff filed an application under Order VI, Rule 18 of the CPC on the ground that the amendment could not be carried out in the plaint due to sad demise of a family member of the counsel for the Plaintiff and thereafter Courts were closed for summer vacation from 14th May, 2010 to 18th June, 2010 and, therefore, prayed for condonation of delay in carrying out the amendment as well as to permit him to incorporate the amendment in the plaint but the learned trial Court failed to exercise the jurisdiction and not only

dismissed the application under Order VI, Rule 18 of the CPC but also dismissed the suit itself, therefore, learned trial Court committed an illegality in passing the impugned order.

Learned senior counsel for the Petitioner placing reliance on the decisions rendered by a learned Single Judge, in the case of Devhans v. Jagmohan Singh 1980 (I) MPWN SN 170, Amur Singh and Ors. v. Pooran and Ors. 2007(2) MPLJ 215 and a Division Bench of this Court, in the case of Shyama Prasad Datta and Ors. v. Arun Kumar Vasudeo and Ors. 2010(5) MPLJ 1 : ILR (2010) MP 1588, prayed that the impugned order dated 29th June, 2010 be set aside and the application filed by the Petitioner under Order VI, Rule 18 of the Code of Civil Procedure, be allowed. Learned Counsel has also placed reliance on the Division Bench decision of this Court in the case of Chamrin v. Budhiyarin and Anr. 1975 MPLJ 82 : 1975 JLI 52.

Per contra, Shri D.K. Katare, learned Counsel for the Respondents/Defendants has submitted that application preferred by the Plaintiff under Order VI, Rule 17 of the Code of Civil Procedure, was allowed. Thereafter, the Plaintiff was required to amend the plaint by incorporating the name of Smt. Hukuma Devi as Defendant No. 11 and further to pay the process fee for issuance of summons to the newly added Defendant but no steps have been taken and neither the amendment was carried out nor the process fee was paid, but, submitted an application under Order VI, Rule 18 of the CPC was submitted which was rejected by the learned trial Court for non-compliance of the Court's order and the suit itself was rightly dismissed. It has been further contended that the present petition under Article 227 of the Constitution of India is not maintainable inasmuch as the Plaintiff must have filed an appeal. In short, the contention of learned Counsel for the Respondents/Defendants is that the order of dismissal of the suit on the ground of non-compliance of Court's order amounts to a decree which is appealable and as such, no petition under Article 227 of the Constitution of India would lie.

Learned Counsel for the Respondents/Defendants in support of his contention has relied upon the decisions in the case of Shantabai v. Chokhelal 1975 MPLJ 832 : 1976 JLI 12, rendered by a Full Bench and a Division Bench of this Court in the case of Madanlal Kanhaiyalal v. Jai Narayan Gendalal 1971 MPLJ 916 : 1971 JLI 693.

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

We think it appropriate to reproduce the impugned order dated 29th June, 2010 passed by the learned trial Court before adverting to the rival contention of the learned Counsel for the parties, which reads as under:

izdj.k vkt izfr- ?- & 11 dh mifLFkfr ,oa tckc gsrq fu;r gS A

izdj.k esa U;k;ky; ds iwoZ vkns"kkuqlkj oknh }kjk u;s tksM+s x;s izfrokn dh rych gsrq nLrkost ,ao ryokuk vnk ugha fd; tkus ds dkj.k izfr- ?- & 11 dks uksfVI

tkjh ugha fd;k tk ldk A

oknh vf/koDrk }kjk ,d vkosnu i= vUrxZr vkns"k 6] fu;e 18 lh- ih- lh dk izLrqR dj dgk x;k fd U;k;ky; ds iwoZ vkns"k fnukad 13 & 5 & 2010 ds vuq"kj.k esa oknh vf/koDrk ds ;gka xehZ gks tkus ds dkj.k vkns"k dk ikyu ugha dj lds A vr% vkns"k ikyu gsrq le; fn;s tkus dh izkFkZuk dh xbZ A vkSj foi{kh vf/koDrk dks bl vkosnu dh izfr fn;s tkus ij muds }kjk l vkosnu dk fojks/k fd;k x;k A

vfHkys[k ds voyksdu ls ;g Li"V gS fd izdj.k esa ikfjr vkns"k fnukad 19 & 2 & 2010 ds vuqLkj gh oknh vf/koDrk }kjk U;k;ky; ds iwoZ vkns"k ds vuq"kj.k esa fof/kor~ ryokuk vnk ugha fd;s tkus ij izfroknH dsk uksfVI tkjh ugha fd;k x;k Fkk vkSj bl laca/k esa oknh }kjk izLrqR vkosnu ij Lohdkj fd;k tdkj oknh dks ryokuk vnk;xh gsrq ,d le; fd;k x;k Fkk A bl rjg bu vk/kkjksa ij ;g Li"V gS fd oknh }kjk U;k;ky; ds vkns"k dk ikyu iwoZ esa Hkh ugha fd;k tkrk jgk gS A bls vfrfjDr ;g izdj.k fnukad 23 & 12 & 2006 dks izLrqR fd;k x;k gS vkSj bUgha dkj.kksa ls orZeku esa Hkh izfroknH dh mifLFkfr ds fy;s gh fu;r gS A bls vfrfjDr vkns"k dh rkehyh gsrq djhc Ms<+ ekg dk le; izkIr gksus ds ckn Hkh u rks U;k;ky; ds vkns"k ds vxz"kj.k esa okni= esa la"kks/ku fd;k x;k gS vkSj u gh u;s tksM+s x;s izfroknH dks rkehyh gsrq ryokuk vnk fd;k x;k gS A vr% ,slh fLFkfr esa oknh vf/koDrk ds ;gka xeh gks tkus ds dkj.k mlesa yxus okys le; dks NksM+dj Hkh oknh ds ikl U;k;ky; ds vkns"k dh rkehyh gsrq i;kZIr le; jgk gS A ijUrQ mlDs ckn Hkh oknh }kjk vknru U;k;ky; ds vkns"k dk ikyu ugha fd;k x;k gS A vr% ,slh fLFkfr esa oknh }kjk izLrqR ;g vkosnu lnHkkfod nf"kZr ugha gksrk gS vr% vLohdkj fd;k tkrk gS A

bl rjg oknh }kjk U;k;ky; ds vkns"k dk ikyu ugha djus vkSj oknh }kjk vkns"kkuqlkj okni= esa la"kks/ku lekfgR ugha djus rFkk u;s tksMs+ izfroknH dh rYch gsrq vkns"kkuqlkj ryokuk vnk ugha fd;s tkus ds dkj.k oknh }kjk izLrqR ;g nkok [kkfjt fd;k tkrk gS A

On going through the record, we find that the Petitioner/Plaintiff filed a suit for specific performance of an agreement to sale dated 1st April, 2005 against the Defendants No. 1 to 8. The Defendant No. 4 sold some area of land from disputed Survey No. 1393/1 to one Siroman Singh by a registered sale deed dated 16th October, 2007, therefore, Siroman Singh was impleaded as Defendant No. 9. Subsequently, Defendants No. 1 to 4 have executed an agreement of sale in respect of some area from the disputed land in favour of Smt. Hukuma Devi and said Smt. Hukuma Devi had started the construction on it, therefore, the Plaintiff had made an application for amendment and impleading Smt. Hukuma Devi as Defendant No. 11 in the suit. Vide order dated 13th May, 2010, the learned trial Court allowed this application and directed to incorporate the amendment in the plaint. Thereafter, the Plaintiff was required to incorporate the amendment, in the plaint and has to deposit the process fee for issuing summons but no steps have been taken by the Plaintiff.

On 29th June, 2010, the Plaintiff filed an application under Order VI, Rule 18 of the CPC alleging that due to sad demise of the family member of the counsel for

the Plaintiff and thereafter Courts were closed for summer vacation from 14th May, 2010 to 18th June, 2010, amendment in the plaint could not be made, therefore, permit him to incorporate the amendment in the plaint.

In view of the averments made in the application under Order VI, Rule 18 of the CPC (Annexure P/6), according to us, sufficient and good cause is made out for extending the time to incorporate the amendment in the plaint which was already allowed by the learned trial Court.

Indeed, even if the application under Order VI, Rule 18 of the CPC could not be allowed then the Civil Suit could not have dismissed by the learned trial Court on account of failure to incorporate the amendment in the plaint. Thus, the approach of the learned trial Court in this regard is perverse and illegal.

Since the amendment was not made in the plaint and the name of Smt. Hukuma Devi, proposed Defendant No. 11 was not incorporated in the cause title then in absence thereof, the suit could not be dismissed on the ground that the process fee was not paid. The learned trial Court acted with material irregularity in dismissing the suit itself.

It is well settled in law that the Legislature has enacted the procedural laws for providing justice to the parties and not to stall the process of law to provide justice.

In the case of Madanlal Kanhaiyalal (supra), the procedure in case of absence of a party in the proceeding is laid down whereas in the case of Shantabai (supra), it has been held that where the Court expressly decide the suit under Rule (3) of Order 17 of the Code of Civil Procedure, the proper remedy for the party concerned would be to file an appeal. Considering the facts and circumstances of the case in hand, we are of the view that the judgments relied upon by learned Counsel for the Respondents in the case of Madanlal Kanhaiyalal (supra) and Shantabai (supra) are distinguishable on facts and not applicable.

As regards, the power of the High Court under Article 227 of the Constitution of India, this Court in the case of Amar Singh (supra) has observed as under:

11. However, this Court cannot ignore the fact that the present writ petition is under Article 227 of the Constitution of India and if the Court below has misunderstood the scope of its jurisdiction, the constitutional power of the High Court under Article 227 can be invoked to set right such error and prevent gross injustice. The Supreme Court has recognized the power of the High Court to interfere with the orders of subordinate Courts and Tribunals where (1) there is an error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard of the provisions of law, and (2) a grave injustice or gross failure of justice has occasioned thereby in the case of State of Andhra Pradesh Vs. P.V. Hanumantha Rao (D) thr. Lrs. and Another,

Further, a Division Bench of this Court in the case of Shyama Prasad Datta (supra), has held that the High Court has to exercise its power under Article

226/227 of Constitution of India and it has to strike with the sword of its power against each and every illegality wherever it is and whenever it is brought to the notice of the Court.

For the reasons stated hereinabove, we are of the considered view that the order dated 29th June, 2010 as contained in Annexure P/1 is not sustainable in the law and in exercise of the powers conferred under Article 227 of the Constitution of India, it should be set aside.

Resultantly, the impugned order dated 29th June, 2010 as contained in Annexure P/1 is hereby set aside and the application under Order VI, Rule 18 of the Code of Civil Procedure, filed by the Plaintiff/Petitioner is hereby allowed. The suit is restored to its original number, the Plaintiff/Petitioner is directed to incorporate the proposed amendment in the plaint within a period of three weeks from today. The learned Trial Court is directed to decide the suit thereafter on merits, in accordance with law.

With the aforesaid, this petition is allowed and disposed of with no order as to cost.