

(2024) 03 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1396 Of 2024

Ramprakash Sharma (Died) Through Lrs (A) Virendra Sharma **APPELLANT**
And Others

Vs

Ramadhar (Dead) Through Lrs (A) Santosh Sharma And **RESPONDENT**
Others

Date of Decision : 11-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Section 94, 151, Order 39 Rule 1, Order 39 Rule 2

Citation : (2024) 03 MP CK 0017

Hon'ble Judges : Anand Pathak, J

Bench : Single Bench

Advocate : Rohit Bansal, Vivek Khedkar

Judgement

Anand Pathak, J

1 . The present petition under Article 227 of the Constitution has been preferred by the petitioners taking exception to three orders passed by the Trial Court in which one order is dated 12.02.2024, second order is dated 02.03.2023 and third order is dated 22.09.2022.

2 . As per Chapter X Rule 7, separate petition shall be made in regard to distinct subject matters only with the exceptions as provided in proviso that one petition may be filed challenging more than one order passed in the same case 'on the same day', with the leave of the Court and subject to the law related to court fees. Therefore, petitioners can challenge only one order in this petition.

3. At this stage, learned counsel for the petitioners fairly submitted that he intends to challenge order dated 12.02.2024 by way of instant petitioner, therefore, he prays for withdrawal of this petition in respect of orders dated 22.09.2022 and 02.03.2023 passed by the Trial Court with liberty to challenge the said orders in accordance with law in different writ petitions.

4. Prayer noted.

5 . Petition stands dismissed as withdrawn in respect of orders dated 22.09.2022 and 02.03.2023 passed by the Trial Court.

6. Heard on admission/stay in respect of order dated 12.02.2024.

7. Petitioners are plaintiffs and filed a suit for declaration of title and permanent injunction against the defendants who happen to be their cousins and their fathers were real brothers. Initially an application under Order XXXIX Rule 1 and 2 of the CPC was preferred by the petitioners/plaintiffs and same was partly allowed. Prayer regarding possession was refuted but in respect of alienation of suit property, defendants were enjoined not to alienate the property. However; it appears that later on an application under Section 94 readwith Section 151 of the CPC was preferred by the defendants and Trial Court allowed the said application and enjoined the plaintiffs not to interfere in the peaceful possession of defendants. According to the learned counsel for the petitioners/plaintiffs, this creates an anomalous situation in the suit.

8 . Learned counsel for the petitioner relied upon the cases of Kachrumal Vs. Mangilal reported in 1997 (1) MPWN 143, Laxminarayan and others Vs. Kailashnarayan and others reported in 1995 RN 415, Maniklal and others Vs. Rajaram and another reported in 2003 RN 383 and submitted that in respect of ancestral property, all co-owners / successors are assumed to be in joint possession of ancestral property. Therefore, such an order passed by the Trial Court goes contrary to the mandate of this Court as referred above. He fairly submitted that temporary injunction can be granted to the defendants but to the extent as defined in Order XXXIX Rule 1 (a) of CPC. He also relied upon the case of Nandu S/o Bhagwan Das and another Vs. Jamuna Bai and others reported in (2016) 3 MPLJ 604.

9 . Issue notice to the respondents on payment of process within seven working days through registered A.D. mode, returnable within four weeks.

10 . Till next date of hearing, status quo in respect of the suit property shall be maintained by the parties.

C.C. as per rules.