
(2003) 08 MP CK 0014
In the Madhya Pradesh High Court
Case No : C.R. No. 2737 of 2000

Ramprasad Chourasia

APPELLANT

Vs

Premchand Chourasia and Others

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 103

Citation : AIR 2005 MP 50

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : R.P. Agrawal, for the Appellant; S.K. Mishra, for the Respondent

Final Decision : Allowed

Judgement

S.K. Pande, J.—Heard.

2. This revision is directed against the order dated 21-9-2000, passed by II ADJ, Satna in execution case No. 1/93.

3. In F.A. No. 105/66 Premchand v. Smt. Saraswatibai a compromise decree (Annexure A-2) was passed by this Court. As per this decree, Late Saraswatibai was made entitled to remain in possession of the three houses subject to the following conditions :--

"(a) Smt. Saraswatibai shall not alienate the suit properties to the extent of half, but she will be at liberty to alienate the other half. It will be her choice which half she would alienate and which she would preserve.

(b) On her death, half of the properties so preserved shall go to Premchand and Champalal: or their heirs.

(c) In order to avoid further litigation between the appellants inter se, it is agreed that Premchand's share is 2/3rds, while Champalal's 1/3rd. Durgaprasad shall claim no share."

4. Smt. Saraswatibai died on 18-8-1982. Champalal also died on 31-3-1985. Applicant Ramprasad Chourasia claiming himself to be the son of Mohanlal, brother of Champalal filed execution application seeking possession of 1/3 portion of the suit house said to have been obtained by Champalal on the death of Smt. Saraswatibai. This application was resisted by the non-applicants. The executing Court vide impugned order in para 15 observed that unless applicant Ramprasad Chourasia seeks a declaration from Court of competent jurisdiction to be the heir of Late Champalal, the decree at his instance cannot be executed. Being aggrieved, applicant Ramprasad Chourasia has preferred this revision.

5. The decree in F.A. No. 105/66 is very specific that on the death of Smt. Saraswatibai, Premchand, Champalal inter se shall share to the extent of 2/3 and 1/3. Durgaprasad shall claim no share. On the death of Champalal, the heirs has a right to execute the decree seeking possession of 1/3 share of Champalal in the suit house, Filing of separate suit seeking declaration of status of LRs of Late Champalal is not required in view of Order 21, Rule 101 CPC. All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being enforced be deemed to have been jurisdiction to decide such questions. Under Rule 103 orders passed on such applications shall be treated as decree, therefore, the Court below erred in directing the applicant to seek declaration of right, title in respect of share said to have fallen to Late Champalal with reference to judgment-decree in FA No. 105/66 (Annexure A-2). Instead the executing Court ought to have proceeded with the enquiry as to the rival claims of the respective parties and to adjudicate the dispute as to right, interest said to have been inherited by applicant Ramprasad Chourasia.

6. Consequently, the revision is allowed. The order impugned is set aside with the direction to the executing Court to proceed further with the enquiry as above.

No order as to costs.