
(2013) 10 MP CK 0212
In the Madhya Pradesh High Court
Case No : First Appeal No. 282 of 2008

Ramvilas

APPELLANT

Vs

Smt. Shantabai

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0212

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

Bench : Single Bench

Advocate : Vikram Johri, for the Appellant; A.D. Mishra, Learned Counsel, for the Respondent

Judgement

K.K. Trivedi, J.—This appeal is directed against the order and decree dated 22.2.2008 passed in Civil Suit No. 12-A of 2007 by which the suit filed by the appellant has been dismissed holding it to be barred by limitation. It is contended that when a specific plea was raised with respect to the cause of action, on the basis of which the suit was filed, and when a contrary statement was made in the written statement by the respondents/defendants, it was necessary for the trial court to record the evidence in respect of filing of the suit and a finding should have been given only after recording the evidence of the parties. Such an issue should not have been tried as a preliminary issue only on the basis of affidavit and the pleadings of the parties. It is contended that in view of the law well settled, the order and decree passed by the court below is bad in law.

2. Learned counsel for the respondents vehemently contended that such a finding could have been recorded by the trial court on the basis of pleadings of the parties. Since the appellant himself has admitted in the pleadings that in the agreement the last date fixed for execution of the sale deed was 15.5.2000, the limitation would start from the said date and accordingly the suit filed by the appellant was barred by limitation. If such a finding is recorded by the court below, no irregularity is committed by it in dismissing the suit of the plaintiff/

appellant on the ground of limitation.

3. Heard learned counsel for the parties at length and perused the record.

4. Considering the rival submissions made by the learned counsel for the parties and considering the law well settled, it was necessary for the trial court to record the evidence of the parties on all the issues so framed by the trial court, while trying the issue relating to limitation as a preliminary issue. It is well settled that if a preliminary issue is required to be tried after recording of the evidence, the evidence in all issues should be recorded and then the matter should be decided. It is also well settled that question of limitation is a mixed question of facts and law and cannot be decided except by recording evidence. Full Bench of this Court in the case of Santoshchandra and Others Vs. Smt. Gyansundarbai and Others, has categorically held that the question of limitation needs recording of evidence to ascertain as to what would be the crucial day from which the cause of action for filing of the suit was available to the plaintiff. Merely because an assertion is made in the plaint, which fact is denied by the defendant by filing the written statement, a conclusion cannot be drawn that such a cause of action has not arisen on the basis of which the suit is filed by the plaintiff. This particular aspect is further considered by this Court in the case of Mrityunjay Prasad Vs. Santosh Kumar Mishra and Others, wherein also it has been held that the question of limitation is a mixed question of law and fact and cannot be decided except by recording evidence. Admittedly, no oral evidence was recorded by the trial court and only on the assertion made by the respondents/defendants it was held that the suit filed by the appellant was barred by limitation. Merely because of such a fact, as stated in the plaint, which requires the explanation by oral evidence, the suit should not have been treated as barred by limitation.

5. In view of the aforesaid, the impugned order and decree is set aside. The matter is remitted back to the trial court to record the evidence in all issues including the issue of limitation and decide the suit of the appellant expeditiously preferably within a year from the date of receipt of the record of the case. Registry is directed to transmit the record of the trial court immediately to the court below for expeditious trial of the suit. The appeal is allowed to the extent indicated hereinabove. There shall be no order as to costs.