
(2000) 06 MP CK 0031
In the Madhya Pradesh High Court
Case No : Civil Revision No. 2860/99

Smt. Jagran and others

APPELLANT

Vs

Smt. Basanti Bai and others

RESPONDENT

Date of Decision : 19-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 1, 115
Evidence Act, 1872 — Section 102

Citation : (2002) 1 JLJ 236 : (2001) 1 MPHT 430

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Shri Umesh Trivedi, for the Appellant; Shri Atul Awasthy, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.—Invoking the revisional jurisdiction of this Court u/s 115 of the CPC (hereinafter referred to as "the Code") the defendants applicants have called in question the sustainability of the order dated 29-9-99 passed by the learned District Judge, Bilaspur in Civil Suit No. 23-A/99.

2. Shorn of unnecessary details the facts which are necessary to be stated for disposal of this civil revision are that the non-applicant No. 1 as plaintiff filed a Civil Suit for accounts and for possession of half portion of the disputed land and the house, averring that her father Ramnath and Jagannath Prasad, father of applicants No. 2 & 3, were brothers and they constituted a Joint Hindu Family. It was further pleaded that the entire disputed properties were Joint Hindu Properties. It is alleged in the plaint that the defendants had sold the part of the property and were bent upon to sell other properties and this act of the defendants compelled the plaintiffs to file the instant suit claiming different reliefs. The defendant Nos. 1 and 3 filed their written statement which has been brought on record as Annexure A-2. The defendant Nos. 2 and 4 filed a separate written statement which has been brought on record as Annexure A-3. The

essential pleading of the defendants is that Ramnath and Jagannath were not the members of Joint Hindu Family and the property had not been purchased from the Joint Hindu Family nucleus, but, in fact, the property had been purchased by Jagannath alone exclusively from his own earnings and he had constructed the house on the suit land out of his own funds.

3. After the issues were framed the plaintiff/non-applicant No. 1 filed an application praying therein that the defendants should lead the evidence as they have taken the plea that the property was self-acquired property of Jagannath. A reply was filed by the answering defendants who prayed for rejection of such an application on the ground that the burden is on the plaintiff to prove her case, and thereafter, the defendants may be called upon to adduce evidence.

4. The Trial Court considered the application and came to hold that the burden is on defendant Nos. 1 to 4 to lead the evidence first in respect of Issue No. 2 (b) as the burden of proving the same squarely falls on them.

5. Assailing the aforesaid order Mr. Umesh Trivedi, learned counsel for the applicants, has contended that the learned Trial Judge has misdirected himself with regard to the concept of right to begin and, therefore, the order passed by him is vulnerable in the eye of law. It is also submitted by him that the Court below has committed gross illegality by opining that the onus was squarely on the contesting defendants though presumption with regard to joint family property only arises if there is nucleus sufficient to make the impugned acquisition and hence the plaintiff who had pleaded the property to be joint family property should have been asked to begin.

Combatting the aforesaid submission Mr. Atul Awasthy, learned counsel for the plaintiff/non-applicant has contended that the contesting defendants having taken the positive plea that the suit properties were self acquired properties of Jagannath the Trial Court has rightly placed the onus on them and commanded them to begin.

6. To appreciate the rival submissions raised at the Bar I have carefully gone through the written statement filed by the defendant Nos. 2 and 4 and defendant Nos. 1 & 3. On a close scrutiny of the pleadings it clearly transpires that their plea is that the properties are self-acquired properties of Jagannath as it was purchased from his own earnings. It has also been clearly and categorically stated that Ramnath did not contribute anything for the purchase of land and construction of the house. Thus, the stand of the defendants is that the properties in question were acquired out of the earnings of Jagannath, and hence, they are not joint family properties. It is to be noted that in Paragraph 13 of the plaint it is pleaded that Khasra No. 485/5 area 0.35 acre and Khasra No. 148 area 0.19 acres were purchased from the joint family funds. The defendant No. 5 has admitted the claim of the plaintiff in the written statement filed by her. The contesting defendants in reply to notice to admit documents relating to the above said transaction admitted these documents with a rider that the

consideration was not paid from the joint family nucleus. It has been mentioned in the plaint that the documents reflect that the construction amount was provided by Ramnath who as alleged by the plaintiff was joint with Jagannath. Considering all these circumstances the learned Trial Judge framed issue No. 2 (b) which reads as under :--

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There is no iota of doubt if the Issue No. 2 is answered in favour of the contesting defendants, the plaintiff's suit is bound to fail and he will not be entitled to any relief. It is well settled in law that the person who alleges that the property is the self acquired property the burden lies on him to prove the same. It is worth noting here that the plaintiff has averred that the properties belong to joint family properties, and hence, she has to prove that the joint family had such nucleus from which the property could be acquired but this assertion has been controverted and a positive plea has been taken by the contesting defendants that the property was purchased from the earnings of Jagannath. If the defendants are successful in discharging the onus the plaintiffs suit is bound to meet with failure, In this context, I may profitably refer to the decision rendered in the case of Jhadiram Vs. Manpyare 1978 (2) MPWN 63, wherein the plaintiff pleaded that the suit property was the property of Joint Hindu Family and liable for partition. The defendant took the plea that the partition in respect of the suit property had already taken place earlier, and hence, the plaintiff was not entitled to bring the suit for partition. The Trial Court cast the onus on the plaintiff and directed him to begin. Reversing the said order the learned Judge held as under :--

"On going through the record, I find that in the present suit there are several issues the burden to prove the some of which lies on the plaintiff and some on the defendants. I also find that if the plea of the defendants that partition had already been effected and the plaintiff had got his share is proved, the plaintiff will not be entitled to any part of the relief which he seeks. Thus, the provisions of Order 18 Rule 1 of the CPC are attracted."

7. In the case of Radha Traders, Morena (M/s.) Vs. Chhakkoolal 1986 ILJ 377, a learned Single Judge while dealing with the concept of Order 18 Rule 1 held as under :--

"7. Order 18 of the CPC in terms speaks of the "hearing" of a suit and not the trial of the suit. A Court is concerned with the trial of a suit from the time when it is instituted. The hearing of a suit is only a part of the trial of the suit. The determination of the question as to which party has a right to begin is an integral part of the hearing itself.

8. In the light of the above discussion, I propose to examine the question at hand after perusal of the pleadings of the parties. It is an admitted fact that the defendant issued a "cheque" of Rs. 10,000/- in favour of the plaintiff which could not be cashed by him and hence the suit has to be filed. No doubt, the defendant

says that the said cheque was obtained by fraud, yet the person alleging fraud has to shoulder the burden to prove it. If the execution of cheque is admitted, by the defendant but he says that it was obtained by fraud, which is denied no doubt by the plaintiff and if no evidence were given on either side, the plaintiff would succeed as the execution of cheque is not disputed and the fraud is not proved, therefore, the burden of the proof is upon the defendant. Trial Court has rightly held so in the impugned judgment."

Applying the aforesaid enunciation of law to the obtaining factual matrix it becomes graphically clear that Issue No. 2 (b) is answered in favour of the defendants then the plaintiff's suit is bound to fail, and therefore, the learned Trial Judge has rightly directed the contesting defendants to lead the evidence first.

9. In view of my preceding analysis, I do not find any error of jurisdiction in the order passed by the learned Trial Judge or material irregularity in exercise of the jurisdiction. In the result, the civil revision , being devoid of merit, stands dismissed.

10. Civil Revision dismissed.