
(2013) 01 MP CK 0168

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13125 of 2012

Smt. Ullan Bai Loniya

APPELLANT

Vs

Smt. Prema Devi and others

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 227

Citation : (2013) 01 MP CK 0168

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Jagtendra Prasad, for the Appellant; Vivek Rusia, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon

1. Challenging the interim order passed by the 4th Additional Judge to the Court of District Judge, Satna in Civil Suit No. 49/2012 vide Annexure P/1 on 13.7.2012, granting permission to respondent Smt. Prema Devi to sell certain portion of the land as indicated in paragraph 16 of the impugned order, to the extent of 0.190 Hectares, petitioner has filed this writ petition. Respondent Smt. Prema Devi is defendant in the suit filed by plaintiff Smt. Ullan Bai Loniya and others with regard to the property in question. Initially it seems that certain injunction was granted in a proceeding held under Order 39 Rule 1 and 2 of the Code of Civil Procedure, in the matter of the property in question and the case came to this Court in W.P. No. 13337/2007. The said writ petition was filed by the present non-applicant Smt. Prema Devi and others and in the said writ petition they were aggrieved by an order-dated 3.9.2007 passed by the appellate court, in the matter of restraining them from alienating the property in question and granting temporary injunction. During the proceedings held in the said writ petition before this Court on 5.4.2011, it seems that a prayer was made on behalf of Smt. Prema Devi to the effect that she is suffering from certain

ailments and, therefore, permission be granted to her to sell certain part of the property to meet the expenses for her treatment. Smt. Prema Devi is more than 63 years of age Smt. Ullan Bai Loniya Vs. Smt. Prema Devi and others and this Court in the said writ petition on 5.4.2011, vide order - Annexure P/4, granted liberty to Smt. Prema Devi and others to move an application seeking permission to alienate certain portion of the suit property in case they are in requirement of any money for treatment. The application was filed and the application having been allowed, respondents are before this Court.

2. Learned counsel for the respondents submitted that when the suit for partition itself is pending, the direction given for sale of the property in question is unsustainable.

3. Shri Vivek Rusia, learned counsel, invites my attention to the documents available and points out that undisputedly the portion permitted to be sold belongs to Smt. Prema Devi and her Legal Representatives and, therefore, in directing for sale of the property to meet her treatment the court below has not committed any error. Learned counsel invites my attention to the Khasra entries in this regard, available in Annexure R/2 and the medical documents - Annexure R/1, to contend that a reasonable decision taken by the trial court and the discretion exercised does not call for any interference.

4. I have heard learned counsel for the parties at length and perused the record.

5. The court below took note of the ailment of respondent Smt. Prema Devi and found that she is in requirement of some amount for her treatment and has permitted to sell some portion of the land after being satisfied that she is in possession of the said land. The discretion exercised by the court below and the Smt. Ullan Bai Loniya Vs. Smt. Prema Devi and others reasons given for permitting Smt. Prema Devi to sell the land cannot be termed as erroneous or illegal to such an extent that interference at this stage in a petition under Article 227 of the Constitution is called for. Accordingly, finding no ground to interfere into the matter, the petition is dismissed.