
(2009) 09 MP CK 0051
In the Madhya Pradesh High Court
Case No : S. A. No. 48 of 2000

Surtan Lallu

APPELLANT

Vs

Raghunath prasad (died) through his legal Representatives
bablu and Others

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 1 MPLJ 38

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : Shishir Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

A. K. Shrivastava, J.

This is defendant's Second Appeal. The suit of plaintiff for declaration and injunction in respect to certain agricultural lands which is the subject-matter of the suit was filed by the plaintiff on the basis of his Bhumiswami right. The learned trial Court decreed his suit. An appeal was preferred by defendant/appellant and during the pendency of First Appeal, plaintiff No. 1 - Raghunath Prasad died on 1-11-1988. An application was submitted for bringing his LRs. on record which was dismissed by learned First Appellate Court on 12-1-1993. Against the said order the defendant filed petition (W.P. No. 303/1993) under Article 227 of the Constitution of India before this Court which was allowed on 17-1-1996 and it was directed to correct the cause title, however, the cause title of the memorandum of appeal was not corrected by the appellant as a result of which an application was submitted before the learned First Appellate Court in 13-12-1999 to correct the cause title. The learned trial Court has rejected the application and eventually, dismissed the appeal by the impugned judgment.

In this manner this Second Appeal has been filed by the defendant.

This Court on 4-10-2007 admitted this Second Appeal on the following substantial question of law :-

Whether in view of order dated 17-1-1996 passed in W. P. No. 303/96, the lower Appellate Court committed error in rejecting the application filed by the appellant for amendment on the ground of delay and also committed legal error in dismissing the First Appeal of the appellant?

The contention of Shri Saxena, learned counsel for the appellant, is that after having allowed the application to bring the LRs. on record in W. P. No. 303/1996 decided on 17-1-1996, it was only the ministerial job to correct the cause title and, therefore, if the application was not filed within fourteen days or even thereafter, it would not mean that the application for bringing the LRs. on record has been rejected and, therefore, learned First Appellate Court erred in substantial error of law in not allowing the application of defendant to correct the cause title.

Having heard learned counsel for the appellant and on going through the record I am of the view that this appeal deserves to be allowed.

Regarding Substantial Question of Law:

True, the application for bringing the LRs. on record was rejected by learned First Appellate Court on 12-1-1993, but the same was set aside by this Court in Writ Petition No. 303/1996 decided on 17-1-1996 and the application was allowed and it was directed to correct the cause title. Thus, when the application for bringing the LRs. on record was already allowed, writing names of the proposed LRs. as respondents in the memo of appeal was simply a ministerial job and, therefore, according to me, learned First Appellate Court erred in substantial error of law in dismissing the application of defendant/appellant to correct the cause title. However, looking to the period of delay, since the application was moved after near about three years, I am of the view that costs of Rs. 5,000/- be imposed on appellant. On depositing the cost of Rs. 5,000/- on or before 30th November, 2009 the appellant shall be permitted to amend the cause title of the appeal memo and thereafter, the learned First Appellate Court shall hear the appeal finally and decide the matter as early as possible preferably within a period of three months from 30th November, 2009. It is, however, made clear that in case the appellant fails to deposit the cost of Rs. 5,000/- on or before 30th November, 2009, the First Appeal shall stand dismissed.