
(2003) 10 MP CK 0030

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1320 of 2002

Vijay Kumar Pandey

APPELLANT

Vs

Ashok Leylands and Others

RESPONDENT

Date of Decision : 17-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1

Citation : (2003) 4 MPHT 387

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Advocate : Vivek Rusia, for the Appellant; Pratul Shandilya, for the Respondent Nos. 1, 2 and 5, Brijesh Verma, appeared on behalf of K.S. Baghel, for the Respondent Nos. 3 and 4 and Tanu Tandon, for the Respondent

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.—By filing this appeal the appellant has challenged the order dated 10-7-2002 passed by IVth Additional District Judge, Rewa in M.C.J. No. 9/99 by which application under Order 33 Rule 1 of the CPC filed by the appellant has been rejected.

2. The brief facts necessary for the disposal of this appeal that the appellant purchased a Mini Truck on 17-1-1997 after requesting to his father to sell the land of his share and give him money in cash. His father gave him Rs. 1,10,472/- which was paid by him by demand draft dated 2-11-1997. On getting finance for the rest of the price the amount was paid to the Ashok Leyland Company. After the purchase of the said Truck the appellant discovered many manufacturing defects in it and as such he approached the respondents on several occasions to make the vehicle good but they did not pay any heed to it. The appellant filed a civil suit claiming compensation amounting to Rs. 6,38,100/-.

3. In the said suit the appellant made a prayer under Order 33 Rule 1 of the CPC seeking exemption from the payment of Court-fee and register and proceed the

suit in an ordinary manner without payment of Court-fee. The appellant pleaded that he is not in possession of sufficient means to pay the Court-fee. The respondents were noticed and they opposed the application of the appellant filed before the Trial Court under Order 33 Rule 1 of the Code of Civil Procedure. After hearing the parties, the Trial Court dismissed the application submitted by the appellant on the ground that the appellant's father Shashi Bhooshan is having about 25 to 26 acres of land and there is no explanation by the appellant as to why his father could not pay the Court-fee. It has also been held by the Trial Court that the father of the appellant received sufficient retiral benefits and, therefore, the Court below rejected the application.

4. The learned Counsel appearing for the appellant submitted that the aforesaid finding of the Trial Court is not sustainable. The Trial Court has considered the property of the father while the same can not be taken into consideration while deciding the application submitted by the appellant in his individual capacity. The appellant got his share from his father and purchased the aforesaid truck out of the money he received and except the truck which he purchased on finance he has no other property or source of income. The learned Counsel for the appellant has also submitted that the Court below has failed to see that the amount which the appellant received from his father was paid to the respondent company for purchase of truck. It has also been pointed out that the finding of the Court below that the partition deed was prepared to avoid the Court fee is perverse. The Court below has ignored the fact that the partition deed was executed on 26-1-1996, the land was sold on 18-3-1996 and thereafter the truck was purchased on 17-1-1997 and, therefore, it can not be assumed that the partition deed and the sale deed were executed to avoid the Court-fee.

5. I have considered the submissions made by the Counsel for the parties and I am of the opinion that the learned Lower Court has committed gross error in rejecting the application submitted by the appellant. The property owned by the father of the appellant should not have been taken into consideration while deciding the indigency of the appellant. The Court has not recorded any finding that the appellant is in a position that he can pay the Court fee on the suit valued at Rs. 6,38,100/-. From the perusal of the documents filed, it is borne out that the appellant is a person living below poverty line, he has no property or sufficient means and he is unable to pay the Court fee. The reasonings assigned by the Trial Court for disallowing the application are not sustainable and accordingly I hold that the appellant is unable to pay the Court fee required to be paid for the aforesaid suit and it is held that the appellant is an indigent person.

6. In view of this, this appeal is allowed. The order passed by the Court below is set aside and the appellant is permitted to file the suit as an indigent person. The Court below is directed to proceed in the suit ahead. No order as to costs.