

(2003) 07 MP CK 0039

Madhya Pradesh High Court (Indore Bench)

Case No: Second Appeal No. 150 of 2003

Hiru and Others

APPELLANT

Vs

Sarpanch, Gram Panchayat and
Another

RESPONDENT

Date of Decision: July 18, 2003

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8, 100

Citation: (2003) 4 MPHT 478

Hon'ble Judges: A.M. Sapre, J

Bench: Single Bench

Advocate: S.K. Pawnekar, for the Appellant;

Final Decision: Dismissed

Judgement

A.M. Spare, J.

Two Courts have non suited the plaintiffs by dismissing the suit. It is now in this second appeal filed u/s 100 of CPC, the plaintiffs have contended that the appeal involves substantial question of law as required to be made out and hence, it be admitted. So the question that arises for consideration in this second appeal is, whether appeal involves any substantial question of law ? The impugned judgment and decree is dated 26-11-2002, passed by learned Ist Additional District Judge, Barwani, in C.A. No. 10-A of 2000, which in turn arises out of Civil Suit No. 15-A of 1998, decided by Civil Judge, Class II, Rajpur, on 29-1-2000.

2. 4 plaintiffs (non-appellants herein) filed a suit by invoking the provisions of Order I Rule 8 of CPC claiming in substance a declaration and injunction against the defendant alleging inter alia that they have a right to remain in occupation of the land in question and carry on the business of manufacture of Bricks. It is alleged that they have paid some tax to Panchayat and hence, acquired a right to retain the land to carry on their business of manufacture of the bricks. It is alleged that since

they are doing this business for last 200 years and hence, State and/or Panchayat has no right to interfere in their possession and hence, injunction is also claimed. The defence was that of denial.

3. It is this issue which was probed and negated by two Courts below giving rise to filing of this second appeal u/s 100 ibid,

4. Having heard learned Counsel for the appellant and having perused record of the case, I am of the view that the appeal has no merit. In other words, the appeal does not involve any question of law much less substantial question of law and hence, it must merit dismissal in limine.

5. Indeed, in my considered opinion, the suit out of which this appeal arises itself was a misconceived suit having no factual and legal foundation. When a person seeks a relief in person, then there can be no suit that can be filed under Order I Rule 8 of CPC. Here is a case where the case of the plaintiff is that he/they are doing business on a strip/portion of land belonging to State. It is thus, a relief to a particular person in respect of particular land. In such case, recourse to Order I Rule 8 is misplaced. The suit has to be by an individual plaintiff as against the State and it should be in respect of particular piece of land. It has to be then pleaded and proved that a particular piece of land was allotted to a particular person by the State by a particular document for a particular purpose and for particular time on certain terms and conditions. The plaintiff is then required to file a copy of the said allotment/ document indicating creation of interest in him to retain the possession of land. It can be in the form of irrevocable licence or lease or grant as the case may be.

6. The present case is so misconceived that it does not disclose anything. Neither it is based on any document, nor any lease, nor allotment made by State. It only avers payment of one Tax to Panchayat for one year. It does not disclose as to who paid it, for what purpose it is paid, what interest it created etc. In substance, whole thing is so misconceived that it did not require any trial in the suit except for its dismissal at its threshold.

7. I, thus, do not wish to burden my order by stating any more facts, nor do I wish to deal with several legal submissions urged by learned Counsel for the appellant on the interpretation of Order I Rule 8 of CPC and decided cases cited at the bar. In my opinion, dealing them in extenso will be an empty formality - as they are totally dehors the subject.

8. Appeal, thus, fails and is dismissed in limine.