
(1985) 04 MP CK 0021

Madhya Pradesh High Court (Gwalior Bench)

Case No: Civil Revision No. 878 of 1983

Tikaram Parashar

APPELLANT

Vs

Damodar Prasad Tiwari
and others

RESPONDENT

Date of Decision: April 10, 1985

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Contempt of Courts Act, 1971 - Section 12

Citation: (1986) JLJ 422 : (1986) MPLJ 125

Hon'ble Judges: K.K. Verma, J

Bench: Single Bench

Advocate: Lokendra Gupta, for the Appellant; M.C. Jain, Govt. Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.K. Verma, J.

This is a revision u/s 115 CPC against an order dated 17-8-1983 of the Fifth Civil Judge (Class II), Gwalior, in M.J.C. No. 11 of 1983 by which a decree-holder's application dated 17-3-1983 (purporting to be u/s 12 of the Contempt of Courts Act, 1971 read with Order 21, Rule 32 of Civil Procedure Code) for punishing the non-applicants for their having begun (on 13-3-1983) survey and demarcation in Kh. No. 86 situate at village Londhra in disobedience of a decree dated 6-3-1972 passed by the court below in case No. 115-A of 1979, permanently restraining the defendant (the State of Madhya Pradesh) from obstructing the declared "bhumiswamis" of the lands, viz.: applicant Tikaram and Shambhusingh (the plaintiff) in peaceful and legal occupation of the lands and for ordering a halt to the survey and demarcation work.

Applicant Tikaram filed the application against non-applicant 1 Damodar Prasad Tiwari and non-applicant 2 O.S. Shrivastava who were the D.F.O. and A.C.F. in the Gwalior Forest Division. N.A. 2 Shrivastava stated that he has neither disobeyed, nor intends disobeying, the Court's order. Then the applicant's application dated 7-4-1983 for impleading Rajendra Singh Kushwah (the successor-in-office of No. 1 Damodar Prasad Tiwari) was allowed. On 5-5-1973 P.S. Mardikar the successor-in-office of Rajendra Singh Kushwah with effect from 10-4-1983 was made non-applicant 4 in the case. On 12-5-1983 Mardikar stated that he had been unnecessarily joined as a party. On 27-9-1983 Rajendra Singh Kushwah was taken off the array of non-applicants on the applicant's request made on the ground that Kushwah had been transferred to a place not known to the applicant, and then the case was fixed for arguments as prayed by the counsel.

Arguments were heard on 2-8-1983. The Judge posed the question whether he had jurisdiction to hear the application and mentioned the applicant's reliance on section 12 of the Contempt of Courts Act and Aligarh Municipal Board & Others v. Ekka Tonga Mazdoor Union & others, AIR 1970 S.C. 1967. The learned Judge distinguished the ruling on the ground that it related to a case to which the Contempt of Courts Act, 1952, applied. He said that the law stated in the ruling was not an authority for investing jurisdiction on him in respect of the application. The Judge then said that the High Court had exclusive jurisdiction u/s 12 of the Contempt of Courts Act, 1971 to punish contempt, and that he (the Civil Judge) had no such power. The Judge therefore dismissed the application on the grounds that he had no jurisdiction to hear the application.

I have heard the learned counsel of the applicant and non-applicant 3 P.S. Mardikar.

The applicant's learned counsel states that the case required that the learned Civil Judge should have made a preliminary investigation into the allegations in the application and if it disclosed a prima facie case it should have referred the case to the High Court for considering taking of contempt proceeding against the contemnors.

Neither the application made prayer that the case be referred to the High Court, nor did applicant request the Civil Judge to make a preliminary investigation into the allegations, against the non-applicants. The application, as framed, was for an order (from the Civil Judge) to punish the non-applicants u/s 12 of the Contempt of Courts Act, 1971. It is, however, clear from section 10 that only the High Court has power to punish contempts of courts subordinate to it. Hence, the prayer in the application one complaining of civil contempt as defined in section 2(b) of the Act could be granted only by the High Court by punishing contempt u/s 12 of the Act. A subordinate Court can make a reference u/s 15(2) only in respect of "criminal contempt" only. Hence, the learned Civil Judge rightly held that he had no jurisdiction to punish contempt u/s 12 of the Act.

Though the aspect of the case under Order 21 rule 32 CPC was not dwelt upon before me, yet I propose to examine it. The application purports to be one u/s 12 of the

Contempt of Courts Act, 1971 read with Order 21 rule 32 Civil Procedure Code. The High Court has exclusive jurisdiction to initiate contempt proceedings under the Contempt of Courts Act, 1971. But, it is the Court which passed the decree which can enforce the decree for permanent injunction under Order 21, Rule 32(1) by ordering detention in the civil prison of the party against whom a decree for injunction had been passed or by the attachment of his property or by both. It goes without saying that such a relief can be claimed by a decree-holder who has filed an application for execution. It has been held in *Kisanlal Ramnivas v. Naraen* AIR 1938 Nag 46 that a decree cannot be executed unless there is an application for execution. Such an application has to be a written application containing the particulars (a) to (j) in order 21, rule 11(2) CPC and to be verified by the applicant.

In the instant case, the application dated 17-3-1983 is not one in accordance with Order 21 rule 11(2), Civil Procedure Code. Apart from the fact that it is not verified it is not signed by the other decree-holder. It does not contain any of the prayers that are set out in Order 21, rule 32(1), Civil Procedure Code. All these requirements are not fulfilled in the application dated 17-3-1983. It may be mentioned that the copy of the judgment of the trial court shows only the State of Madhya Pradesh as the defendant, but the applicant impleaded non-applicants 1 and 2 by name and then added Rajendra Singh Kushwah as non-applicant 3 and then got P.S. Mardikar added as non-applicant and then got Kushwah's name deleted. But he did not seek any relief against the State of M.P. Such an application is clearly not in accordance with Order 21 rule 11(2) read with Order 21, rule 32(1) C.P.C.

To allow execution of decree on such a defective application would be setting at nought the salutary provisions of rules 10, 11 and 32 of Order 21 of the Civil Procedure Code.

It would be, however, open to the decree-holders, if so advised, to file a fresh execution application in accordance with the provisions of Order 21, rules 10, 11, 12, 13, 14, 15 and 32(1) of the Civil Procedure Code.

In the result, I dismiss the revision application with costs. Counsel's fee Rs. 50/-.