

(2016) 03 MP CK 0022

MADHYA PRADESH HIGH COURT (GWALIOR BENCH)

Case No: C.R. No. 41 of 2015

Ranjeet Singh Senger

APPELLANT

Vs

Poonam Senger

RESPONDENT

Date of Decision: March 8, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11

Citation: (2016) 1 MPWN 276

Hon'ble Judges: R.S. Jha, J.

Bench: Single Bench

Advocate: Sarvesh Sharma, Advocate, for the Appellant; Harish Dixit, Advocate and Sanjay Kumar Mishra, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

R.S. Jha, J.—This petition is filed by the applicant being aggrieved by the order dated 16.02.2015 by which the application filed by the applicant under Order 7, Rule 11 CPC has been rejected by the VII Civil Judge, Class II, Gwalior in Civil Suit No.41A/2014.

2. It is submitted by learned counsel for the applicant that the application filed under Order 7, Rule 11 CPC has to be decided on the basis of the averments in the plaint. It is submitted that as the suit is apparently barred under Order 23, Rule 2 of CPC, therefore, the court below was required to look into this aspect before rejecting the application, more so, as the previous suit had been compromised on the strength of the statement of the respondent No.1 through her mother who is still alive and is the **Ranjeet Singh Senger v. Poonam Senger** natural guardian of the respondent, in case she is declared invalid. It is submitted that the present suit that has been filed through the aunt of Poonam Senger is also not maintainable in view of the aforesaid aspect but the same has not been considered and the court

below has rejected the application without taking into consideration the averments in the plaint in this regard and the fact of passing of the previous decree.

3. Learned counsel for the respondent No.1 submits that the previous suit had been filed by the respondent No.1 through her mother in which the mother has given a statement in collusion with the brothers and in such circumstances, the second suit has been filed by the respondent No.1 through her mother's sister. It is submitted that the court below has taken into consideration the averments of the respondent No.1 regarding her mental status and has thereafter rejected the application which does not suffer from any illegality.

4. Having heard learned counsel for the parties, it is observed that the court below was required to **Ranjeet Singh Senger v. Poonam Senger** decide the application under Order 7, Rule 11 of CPC by taking into consideration the averments made in the plaint and the admitted aspects of the case but the court below has not done so. It is also apparent from the impugned order that the court below has not adverted to the provisions of Order 7, Rule 11 CPC and Order 23, Rule 2 of CPC or the fact of maintainability of the suit as urged by the applicant/petitioner but has gone on to reject the application by taking extraneous issues into consideration.

5. In the circumstances, the impugned order dated 16.02.2015 is hereby set-aside and the matter is remitted back to the trial court for taking fresh decision on the application filed by the applicant under Order 7, Rule 11 C.P.C. strictly in accordance with the provisions of law as stated above.

6. With the aforesaid direction, the petition filed by the applicant stands disposed of.