

(2014) 05 MP CK 0145

Madhya Pradesh High Court

Case No: W.P. No. 6924 Of 2014

Rahman Khan

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision: May 9, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Constitution of India, 1950 - Article 227

Hon'ble Judges: Sanjay Yadav, J

Bench: Single Bench

Advocate: Arvind Shrivastava, learned counsel, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Sanjay Yadav, J.

Heard on admission.

2. Order dated 10.4.2014 passed in Civil Suit No. 14 A/2014 by First Civil Judge Class I, Tikamgarh is being assailed vide this writ petition under Article 227 of the Constitution of India; whereby, an application under Order 6 Rule 17, Code of Civil Procedure, 1908 seeking amendment in the plaint has been rejected.

3. Suit by the petitioner/plaintiff is for declaration of title and permanent injunction as regard to land marked as ABCD in the plaint map of Khasra No. 362, Kumedian Mohalla, Nazar Bagh, Tikamgarh, on the contention that he is in possession thereof. Petitioner/plaintiff filed an application under Order 6 Rule 17, CPC seeking amendment in paragraph 12 of the plaint contending that he wants to elaborate the pleadings.

4. Trial Court vide impugned order rejected the application holding that since there is no pleadings in the plaint that he perfected the title by adverse possession, he cannot be allowed to change the pleading in the light of the fact that the plaintiff

has been proceeded against for encroachment and has been penalized. The trial court observed:

5. It has been held in [A.K. Gupta and Sons Vs. Damodar Valley Corporation](#), that "7..... The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred....".

6. In view whereof the rejection of an application under Order 6 Rule 17 CPC by the Trial Court does not suffer from jurisdictional error as would warrant an interference.

7. Consequently, petition fails and is dismissed.