
(2018) 11 MP CK 0015

Madhya Pradesh High Court (Gwalior Bench)

Case No: Misc. Petitions No. 3655 Of 2018

Ramswaroop

APPELLANT

Vs

Matadin Shivhare
(Dead) Through Lrs &
Others

RESPONDENT

Date of Decision: Nov. 14, 2018

Acts Referred:

- Code of Civil Procedure, 1908 - Order 1 Rule 10
- Constitution of India, 1950 - Article 227
- Transfer of Property Act, 1882 - Section 52

Hon'ble Judges: G.S. Ahluwalia, J

Bench: Single Bench

Advocate: Gaurav Mishra, RP Gupta

Final Decision: Dismissed

Judgement

This petition under Article 227 of the Constitution of India has been filed against the order dated 25/07/2018 passed by Additional Judge to First Civil

Judge, Class -II, Lahar, District Bhind in Civil Suit No. 158/2015, by which the petitioner has been denied opportunity to lead evidence in support of his

defence.

The present petition depicts a very state of affairs where the civil suit which was filed in the year 1984, is still pending.

The necessary facts for the disposal of the present writ petition in short are that the original plaintiff Matadin, who has expired during pendency of the

suit and is being represented by his legal representatives, had filed a civil suit for declaration of title and permanent injunction. It appears that the

defendant No.6/respondent No.7 Devi Shankar executed a sale deed in favour of the petitioner on 25/08/1995 without seeking leave from the trial

Court. After execution of the sale deed, the petitioner never filed any application for getting himself impleaded and his seller continued to contest the

civil suit. It appears that on 18/10/2001, the witnesses of the defendants were examined and since the remaining witnesses were not present,

therefore, the rights of the defendants to examine further witnesses were closed.

Further, even after expiry of 17 years, the trial could not be concluded.

It appears that in the year 2011, the petitioner filed an application under Order 1 Rule 10 of CPC for impleading himself on the ground that he has

purchased the property during the pendency of the suit and, therefore, he is now interested and contesting party. It is not out of place to mention here

that the said application was filed after 16 years of purchase of the property. It appears that the petitioner was permitted to file written statement as

well as the documents. It is submitted by the counsel for the petitioner that the plaintiff had filed the suit claiming his coparcenary right in the property,

whereas he was given in adoption by a registered adoption deed and the said defence has not been taken by his seller and once the petitioner was

allowed by the trial Court to file written statement and to place the documents on record, then his right to lead evidence cannot be taken away. It is

further submitted that the Supreme Court in the case of Amit Kumar Shaw and another vs. Farida Khatoon and another reported in (2005) 11 SCC

403, has held that although the transferee is not entitled as of right to be impleaded as party to suit but the Court has a discretion to make him a party

and since the transferee pendente lite is vitally interested in the litigation and the transferor may collude with the plaintiff, therefore, the transferee

pendete lite of an interest in immovable property, is a representative-in- interest of the party from whom he has acquired that interest. Therefore, he is

entitled to be impleaded in the suit and is entitled to be heard in the matter on the merits of the case. It is further submitted that the word "heard" has

been explained by Jammu and Kashmir High Court in the case of Sham Lal vs. Rajinder Kumar Modi and Others, reported in (1993)AIR (J&K) 50

and the word "heard" would include leading evidence.

Per contra, it is submitted by the counsel for the respondent No.1(a)that undisputedly the petitioner purchased the property during pendency of the suit

i.e. on 25/08/1995 without seeking leave from the Court and thus, he has stepped into the shoes of the seller. The petitioner never applied for his

impleadment immediately after the execution of sale deed but he allowed his seller to continue to contest the suit and even the rights of the defendants

were closed to lead the evidence in the year 2001 itself. Thus, it cannot be said by the petitioner that the seller after selling the property to the

petitioner had colluded with the plaintiff, whereas admittedly, the seller had already filed his written statement much prior to the execution of sale

deed.

Heard the learned counsel for the parties.

Section 52 of Transfer of Property Act reads as under:-

"52. Transfer of property pending suit relating thereto.Ã¢â¬During the 1[pendency] in any Court having authority 2[3[within the limits of India excluding

the State of Jammu and Kashmir] or established beyond such limits] by 4[the Central Government] 5[* *] of 6[any] suit or proceedings which is not

collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt

with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein,

except under the authority of the Court and on such terms as it may impose.

1[Explanation.Ã¢â¬For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the

presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been

disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable

by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]"

Thus, it is clear that where the property is sold during pendency of the suit without seeking leave from the Court, then the transferee steps into the

shoes of the transferor and he is bound by the decree, which would be passed in the suit.

The Supreme Court in the case of Dhanna Singh and Others vs. Baljinder Kaur and Others, reported in (1997) 5 SCC 476, has held as under:-

"3. The undisputed facts are that the respondents filed a suit for permanent injunction with the following prayer:-

It is, therefore, prayed that a decree for permanent injunction restraining the defendants from raising any construction over any specific portion of the

property detailed in the heading of the plaint, and also restraining the defendants from filling any part of the property by sand and also restraining the

defendants from alienating any specific portion of the property and also restraining the defendants from transferring the possession of the property

without the same being partitioned between the parties to the suit; may kindly be passed in favour of the plaintiffs against the defendants with costs

and any other relief which the Hon'ble Court may deem fit be also granted.

4. Pending the suit, though several opportunities were given, no evidence was adduced by the defendant. The court passed an order on September 22,

1995 foreclosing the evidence of the defendant on the statement of the counsel that the first defendant was not willing to lead any evidence. An

application for impleadment was filed earlier by the appellant who is a subsequent purchaser from the first defendant. After impleadment, he filed

application for adduction of evidence which was rejected. Thus this appeal.

5. The undisputed fact is that in the plaint the plaintiff- respondent had already sought for a relief of injunction of alienation, yet the alienation came to

be made. Apart from the doctrine of lis Pendence u/s 52 of the T.P. Act, the subsequent purchaser does not get any right to lead to any evidence, as

he stepped into the shoes of the first defendant, who had given up the right to lead evidence. In view of these circumstances, he does not get any right

to lead any evidence."

Thus, it is clear that the subsequent purchaser does not get any right to lead to any evidence, as he stepped into the shoes of the defendants

themselves, whose right has already been closed by the trial Court to lead the evidence. Furthermore, the petitioner cannot be allowed to take contrary

stand which was taken by his transferor. Accordingly, this Court is of the view that the trial Court did not commit any jurisdictional error in rejecting

the application filed by the petitioner. Accordingly, the petition fails and is hereby dismissed.

The interim order dated 13/08/2018 is hereby vacated. As the suit is pending from the year 1984 and the trial has already reached to the stage of final

hearing, therefore, the trial Court is directed to decide the suit within a period of two months from today without granting any adjournment to any of

the parties.

Let a copy of this order be sent to the trial Court for necessary information and compliance.