

**Ram Kumar Mishra Vs. Krishna Kumar Mishra**

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**Court :** Madhya Pradesh

**Decided On :** Aug-30-2013

**Appellant :** Ram Kumar Mishra

**Respondent :** Krishna Kumar Mishra

**Advocate for Def. :** Shri. Anoop Saxena, Ms. Sarita Kanojiya

**Judgement :**

1 Writ Petition No.4789 of 2012 HIGH COURT OF MADHYA PRADESH JABALPUR SINGLE BENCH: Honble Shri Justice A.K. Shrivastava Writ Petition No.4789 of 2012 PETITIONER: Ram Kumar Mishra S/o late Shri Pooranlal Mishra, aged about 58 years, R/o Galla Bazar Chhatarpur, Present Address- Satai Road, Chhatarpur, District - Chhatarpur (M.P.) Versus RESPONDENT:

1. Krishna Kumar Mishra, aged about 51 years, S/o late Shri Pooranlal Mishra, R/o Galla Bazar Chhatarpur, District - Chhatarpur 2. Brajendra Kumar Mishra, aged about 48 years, S/o late Shri Pooranlal Mishra, R/o Galla Bazar Chhatarpur, District Chhatarpur (M.P.)

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Shri Manot Chansoriya, Advocate for the petitioner. Shri Anoop Saxena, Advocate for the respondent No.1. Ms Sarita Kanojiya, Advocate for the respondent No.2.

**ORDER**

(30.08.2013) By this petition under Article 227 of the Constitution of India, the petitioner is challenging the validity of impugned order dated 2 Writ Petition No.4789 o

10. 11.2008 passed by learned First Additional District Judge, Chhatarpur in Civil Suit No.17-A/2008 by which the plaintiff's application under Order 6 Rule 17 of CPC has been rejected.

2. Learned counsel for the petitioner submits that the record of Trial Court had gone in Miscellaneous Appeal No.1116/2004 (Ramkumar Mishra Vs. Krishna Kumar Mishra and another) to this Court and after decision of the miscellaneous appeal on 28.6.2008 which is in respect to temporary injunction, the record was received back by the Trial Court and thereafter the petitioner/plaintiff filed application to amend the plaint based upon subsequent event since defendants have dismantled the house of the plaintiff and raised new construction during the pendency of the suit. Hence it has been prayed that since proposed amendment is based on subsequent events, it may be allowed.

3. Shri Anoop Saxena, learned counsel for the respondent No.1 as well as Ms Sarita Kanojiya, learned counsel for respondent No.2 argued in support of the impugned order. Shri Saxena, learned counsel submits that the proposed amendment sought to be made in para 1 of the plaint is already there in para 1 and 2 of the plaint and, therefore, the application cannot be allowed. Learned counsel further submits that other amendment made in the application cannot be permitted to be incorporated in the plaint. Hence it has been prayed that this petition be dismissed. 3 Writ Petition No.4789 o

4. Having having heard learned counsel for the parties, I am of the view that this petition deserves to be allowed in part.

5. On bare perusal of the amendment application (Annexure P/9), this Court finds that the proposed amendment sought to be made in para 1 of the plaint is in regard as to whether two houses in question is the ancestral property of deceased Nand Kishore Pandey which was exclusively obtained by said Nand Kishore. But, on bare perusal of para 1 and 2 of the plaint, it is gathered that this pleading as to

whether Nand Kishore Pandey was the owner of the two suit houses and he was possessing the same is already there in these paragraphs. Hence to me, this proposed amendment cannot be allowed.

6. However, other proposed amendment in the plaint made in the application are in regard to dismantling of the house and raising of the construction. Since it is based upon subsequent events and earlier the plaint could not be amended because the record of the Trial Court was sent to this Court in the aforesaid miscellaneous appeal. Hence I am of the view that except the proposed amendment sought to be made in para 1 of the plaint, other proposed amendment cannot be refused as they are based upon subsequent events.

7. Eventually this petition succeeds in part and the amendment application of the plaintiff/petitioner is also allowed in part. Except 4 Writ Petition No.4789 of 2012 the proposed amendment sought to be made in para 1 of the plaint , other proposed amendment is hereby allowed and the plaintiff is directed to carry out the amendment in the plaint accordingly. However, the prayer of proposed amendment sought to be made in para 1 of the plaint is hereby rejected. The impugned order is accordingly modified and set aside. Since there is already an order in the miscellaneous appeal to decide the suit within a period of six months but on account of pendency of this petition in which there was a stay, the suit could not be decided. The learned Trial Court is directed not to decide the suit as early as possible preferably within a period of six months from the date of filing of the certified copy of the order passed today. (A.K.Shrivastava) Judge 30.08.2013  
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