

Smt. Motijhari Devi Vs. Smt. Uma Devi

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Court : Madhya Pradesh

Decided On : Jan-24-2013

Appellant : Smt. Motijhari Devi

Respondent : Smt. Uma Devi

Advocate for Def. : Shri. P.K.Pathak

Advocate for Pet/Ap. : Shri. R.S.Sahu

Judgement :

Smt.

Motijhari Devi versus Smt.

Uma Devi & ORS.Writ Petition No.16431

24. 1.2013: Shri R.S.Sahu, learned counsel for the petitioner.

Shri P.K.Pathak, learned counsel for respondent No.1.

Challenging an order dated 28.6.2012 passed by the Appellate Court granting temporary injunction and interfering with an order passed by the trial court refusing injunction, this writ petition has been filed by the defendant.

Plaintiff herein Smt.

Uma Devi filed the suit and the dispute in question pertains to construction being made by the defendant on a wall existing in the western side of the building/house of the plaintiff.

It is the case of plaintiff that she is owner of the property in question, particulars of which are given, and on the western side a wall is situated.

According to plaintiff the wall is constructed by her and she is owner of the wall.

On the western side of the plaintiff's house is situated the house of defendant and it is stated that initially the defendants have made certain construction and the roof is raised on the disputed wall and due to good relationship and maintaining peace in the locality no objection is raised, it is stated that plaintiff did not object now.

It is contended that the defendant are constructing the second floor and while doing so as certain structures are being made on the wall the plaintiff have objected and when the objection was not taken note of, the suit was filed for declaration and injunction and along with the suit an application for temporary injunction was filed.

The learned trial court rejected the application for temporary injunction, on an appeal being filed the appellate court has restrained construction on the wall, this writ petition is filed by 2 the defendant challenging the injunction granted by the learned appellate court.

Various contentions were advanced during the couRs.of hearing and it was tried to emphasized that the plaintiff has encroached upon the area belonging to defendant and as the defendant is only making construction on the property belonging to him there is no question of granting any stay.

On the contrary the plaintiff has filed documents and various reports to show that the construction is being made on the disputed wall which belongs to the plaintiff.

Be that as it may be, the entire matter has been evaluated by the appellate court and the learned court has found that as certain construction are being made and as the construction if made, may adversely effect the right of plaintiff to the wall in

question, ultimately if the construction are to be removed and as the process of removal of construction may cause damage to the property of plaintiff, the learned court has held that no construction should be made during the pendency of the suit, the decision taken by the appellate court and the reasons which weighed with by the appellate court for taking the decision cannot be termed as perverse, illegal or erroneous to such an extent that interference at this stage under Article 227 of the Constitution is called for.

The learned court has found that construction is being made, but as there are serious dispute between the parties with regard to encroachment and demarcation of property for which evidence is required, the same cannot be considered at this stage in proceedings under Order XXXIX Rule 1 & 2 and the learned appellate court has further found that if construction is permitted ultimately, if plaintiff suit is allowed 3 and construction has to be removed possibility of plaintiff's property being disturbed in the process and damage cannot be recovered, therefore, if injunction cannot be granted irreparable loss cause to plaintiff, hence injunction is granted by the learned appellate court.

In view of above, I am not inclined to interfere in the matter.

However, as the suit is pending and question of right of construction is interfered learned court below is directed to decide the suit in accordance to law after hearing all concerned within a period of four months.

With the aforesaid the petition stands disposed of.

Certified copy as per rules.

(Rajendra Menon) Judge ss/-

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