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Balkishan Vs. Ravaraman

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SooperKanoon Citation : sooperkanoon.com/1041027

Court : Madhya Pradesh

Decided On : Aug-06-2012

Appellant : Balkishan

Respondent : Ravaraman

Judgement :

W.P.No.9450/2008 06.08.2012 Shri Sanjay Patel, Advocate for the petitioner/plaintiff.

Shri Ashutosh Tiwari, Advocate for the respondent no.1/defendant no.1.

Smt.

Divya Kirti Bohre, Panel Lawyer for respondent no2/State.

They are heard.

By this petition under Article 227 of the Constitution of India, the petitioner has challenged the validity of the impugned order dated 10.3.2008 (annexure P/5) by which the amendment application of the petitioner has been rejected on the ground of delay.

The contention of learned counsel for the petitioner is that although the suit is pending since 1996 but on 18.4.2008 he filed an application to amend the plaint making a prayer for delivery of possession of the suit property from which he has

been dispossessed in the month of May, 1996.

This application was opposed by the fiRs.defendant/respondent no.1.

Learned Trial Court rejected the application on the ground that the amendment would become time barred.

Hence, this petition has been filed.

I have heard learned counsel for the parties.

As per the averments made in para 2 of the proposed amendment, it is gathered that in June, 1996 the plaintiff/petitioner was dispossessed by the fiRs.defendant and, therefore, it cannot be said that the proposed amendment was barred by time.

However, this court is not expressing any view that on which date the plaintiff was dispossessed and it is only for the learned Trial Court to decide this issue after framing necessary issues in this regard.

Since the amendment application has been filed after a lapse of 11 yeaRs.the defendant no.1/respondent no.1 is entitled to cost.

The amendment application of the petitioner/plaintiff is allowed on payment of cost of Rs.5000/- (Rupees Five thousand only) which he shall deposit in the Trial Court on or before 31.10.2012.

The amendment shall be carried out in the plaint only after the plaintiff deposits the cost in the Trial Court.

It is however made clear that in case on or before 31.10.2012 the cost is not deposited in the Trial Court, the order impugned shall remain stand and this petition shall stand dismissed.

Accordingly, this petition is allowed, the order impugned order dated 10.3.2008 (annexure P/5) is hereby set aside and the amendment application filed by the plaintiff is allowed.

Let amendment be made in the plaint.

The fiRs.defendant/respondent no.1 shall be free to amend the written statement raising a plea of limitation.

If such a plea is raised, necessary issues may be framed and after recording evidence of the parties the said issues shall be decided.

This writ petition is accordingly allowed and disposed of.

No costs (A.K.Shrivastava) Judge rao

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