

Aditya Kumar Palta Vs. Harishankar

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Court : Madhya Pradesh

Decided On : Aug-29-2012

Appellant : Aditya Kumar Palta

Respondent : Harishankar

Judgement :

1 HIGH COURT OF MADHYA PRADESH : JABALPUR Writ Petition No.5142/2012. Aditya Kumar Palta Versus. Harishankar & Others. For the petitioner : Shri A. K. Pathak, Advocate

ORDER

(Passed on 29.8.2012) Per U. C. Maheshwari J.

1. The petitioner/ defendant No.1 has filed this writ petition under Article 227 of the Constitution of India for issuing appropriate writ in the nature of certiorari to quash the impugned order dated 7.3.2012 (Annexure P-7) whereby his application under Section 151 of CPC for appropriate direction to the Secretary, Gram Panchayat, Pondi, Janpad Panchayat Rithi Tahsil Katni to produce the book of the death Certificate of deceased plaintiff No.1 Rammi Bai showing her death on 8.7.2010 has been dismissed. Pursuant to it, the prayer for appropriate direction to the trial Court for summoning the original record as prayed in the aforesaid application (Ann. P.6) is also made.

2. The petitioner's counsel after taking me through the averments of the petition as well as the papers placed on the record by referring para 5-A of the written statement (Ann. P.2) argued that in order to prove the actual date of death of deceased plaintiff No.1 Rammi Bai w/o Ramcharan Kachhi such record is necessary because after her death on behalf of the respondent/ plaintiff an application under Order 22 Rule 3 of CPC (Ann. P.3) to delete her name from the array of the suit was filed contending that her legal representatives the other plaintiffs are already on record. Such application was filed along with death certificate issued with the signature of Hari Shankar on 8.7.2012 (Ann. P.4). According to which such plaintiff was died on 5.7.2010. In such certificate the name of her husband was not mentioned, the same was also not having any official seal of the concerning authority who issued such certificate. He further argued that in the death certificate obtained 2 by the petitioner with the signature of Sarpanch dated 11.10.2011 the name of the deceased was mentioned as Rammi Bai w/o Ramdas Kachhi showing the date of death 5.7.2010 (Ann. P.5) while in the plaint (Ann. P.1) the name of the plaintiff No.1 Rammi Bai w/o Ramcharan Kachhi is mentioned. Accordingly, the wrong name of her husband Ramdas at the place of Ramcharan Kachhi is mentioned in Annexure P.5. In order to resolve the controversy the original record of the death certificate book is necessary and in the lack of it the petitioner could not prove his pleadings stated in para 5-A of amended written statement and prayed to quash the impugned order dated 7.3.2012 by allowing his application (Ann. P.6) with a appropriate direction to the trial Court to summon the original record of the aforesaid death certificate of Annexure P.4 and P.5.

3. Keeping in view the aforesaid arguments, I have carefully gone through the averments of the petition as well as the papers placed on the record so also the impugned order. It is undisputed fact on record that the deceased Rammi Bai plaintiff No.1 along with respondent No.1 to 3 have filed the suit for declaration, perpetual injunction and possession with respect of some agricultural land against the present petitioner as well as the respondent No.4 so also by impleading respondent No.5 as formal party under Order 1 Rule 3-B of CPC. In such proceeding written statement was filed by the petitioner (Ann. P.2). After filing the written statement in pendency of the suit plaintiff No.1 Rammi Bai has passed

away, on which remaining plaintiffs the respondent No.1 to 3 have filed aforesaid application (Ann. P.3) along with death certificate (Ann. P.4) to delete her name stating that her legal representatives, the other plaintiffs are already on record. Such application was allowed by the trial Court, pursuant to that name of the deceased plaintiff No.1 was deleted from the record.

4. True it is that in the death certificate (Ann. P.4) filed along with application Annexure P.3 the name of the husband of Rammi Bai is not mentioned and same is not having any official seal of the concerning authority. The same is signed by one Harishankar but in such certificate book number, serial number and registration number and 3 date of death of said Rammi Bai 5.7.2010 has been mentioned. Subsequent to it another death certificate (Ann. P.5) of deceased Rammi Bai was obtained by the petitioner with the signature of Bhagwandas, Sarpanch of such Grampanchayat Pondi on 11.9.2011. in such certificate the name of Ramdas is mentioned as husband of the deceased but in such certificate also the date of death 5.7.2010 is mentioned.

5. It is apparent from the record that no other date of death of deceased plaintiff No.1 is shown by the petitioner either in the aforesaid application Ann. P.6 or in the amended para 5-A of the written statement Ann.P.2. In such premises in the absence of any rebuttal the aforesaid death certificate could not be prima-facie deemed to be forged or fabricated specially when the remaining plaintiffs the natural heirs have stated in their application also that their mother deceased plaintiff No.1 was died on 5.7.2010.

6. Apart the above looking to the nature of suit which has been filed for declaration, perpetual injunction and possession of the disputed agricultural land the question of validity of death certificate of the deceased plaintiff No.1 could not be deemed to be a material question in the matter. As the suit is not related to decide the question regarding date of death of the deceased or the validity of any of the above mentioned death certificates (Ann. P.4 and P.5). So in such premises and in view of availability of aforesaid prima-facie evidence showing the factum of death of plaintiff No.1, it could not be said that trial Court has committed any error in relying on the aforesaid death certificate and permitting the respondent No.1 to

3 to delete the name of deceased plaintiff No.1 from the record. In such premises original record of the authority regarding death certificate was not necessary.

7. In view of the aforesaid discussion, I have not found any illegality, irregularity or perversity in the impugned order in dismissing the application of the petitioner for calling the original record of death certificate from the Panchayat. As such to adjudicate the tc6 impugned suit such record is not required

8. In view of the aforesaid, this petition being devoid of any merits is hereby dismissed at the stage of motion hearing. However, it is made clear that in view of specific pleading of the petitioner in para 5- A of written statement (Ann. P.2), the trial Court under its discretion shall be at liberty to frame the issue, if necessary and adjudicate the same on merits along with all other issues without influencing from any findings or observation made by such Court in the order impugned or by this Court in this order.

9. Petition is dismissed as indicated above with aforesaid observation. (U. C. Maheshwari) Judge k

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