

Ramesh Vs. Ishwardas

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Court : Madhya Pradesh

Decided On : Feb-06-2013

Appellant : Ramesh

Respondent : ishwardas

Advocate for Def. : Shri. Alok Pathak

Judgement :

Writ Petition No :

3965. / 2010 Ramesh versus Ishwar Das & State of MP 06.02.2013.

Shri A.D.Mishra for the petitioner.

Shri Alok Pathak for respondent No.1.

Petitioner is defendant in the suit in question, which has been filed by plaintiff/respondent No.1 for declaration and injunction with regard to land measuring 1.214 Hectare, situated in KhaSr.No.25/2, PH No.62, Mouza Kudari, Tehsil Gadarwara, District Narsinghpur.

When the case was listed for evidence of the plaintiff and when more than three witnesses of the plaintiff were present and the petitioner was not cross-examining the witnesses and was seeking adjournment, the impugned action was taken.

It is the case of the petitioner that as he wanted certain amendment in the written statement and when the said amendment was dis-allowed, he approached this Court by filing a writ petition under Article 227, being W.P.No.135/2010 and due to pendency of the writ petition, he was seeking adjournment, but when the petition was dismissed on 3.2.2010, his right for cross-examination has been closed and, therefore, it is stated that the impugned order will cause irreparable loss to him.

As such, the prayer made is to quash the order and permit the petitioner to cross-examine the witnesses.

Shri Alok Pathak, learned counsel for respondent No.1, refuted the aforesaid and submitted that the petitioner had been deliberately delaying the matter and since 2010 proceedings in the suit have been stayed.

Therefore, learned counsel prays for dismissal of the petition.

2 Writ Petition No :

3965. / 2010 Ramesh versus Ishwar Das & State of MP A perusal of the proceedings of this Court goes to show that while issuing notice to the respondents, petitioner was directed to deposit a sum of `5,000/- as a pre-condition for taking cognizance of the matter and not taking note of the totality of the circumstances and interest of justice involved, it is thought appropriate to grant one opportunity to the petitioner to cross-examine the witnesses and thereafter the matter proceeded in accordance with law.

Accordingly, it is directed that on the petitioner appearing before the trial court alongwith a copy of this order on 19.2.2013, the learned Court shall fix a date for cross- examination of the witnesses and on the witnesses being present on the said date, petitioner shall cross-examine the witnesses and thereafter the matter shall proceed in accordance with law.

It is made clear if on the date fixed by the Court, as directed hereinabove and if the witnesses are present and if the petitioner refuses to cross-examine the witnesses or commits any default in cross-examination of the witnesses, the learned Court is free to proceed in the matter without granting any further time.

The amount of `5,000/- deposited by the petitioner in pursuance to the order passed on 26.3.2010, be paid to the plaintiff/respondent No.1, as compensatory cost for the same.

With the aforesaid, the petition stands allowed and disposed of.

(RAJENDRA MENON) JUDGE Aks/-

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