

Gajadhar Vs. Rameshwar

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Court : Madhya Pradesh

Decided On : Mar-20-2013

Appellant : Gajadhar

Respondent : Rameshwar

Advocate for Def. : Shri. S.K. Choubey, Smt. Sheetal Dubey

Advocate for Pet/Ap. : Shri. P.N. Dubey

Judgement :

W.P. No. 2047 Of 2010 20.3.2013 Shri P.N. Dubey, learned counsel for the petitioners. Shri S.K. Choubey, learned counsel for respondent No. 1.

Smt. Sheetal Dubey, learned counsel for respondent No. 2.

Heard.

Order dated 2.2.2010 passed by Second Civil Judge Class II, Amarpatan, Satna in Civil Suit No. 498 A/2006 is being assailed vide this petition under Article 227 of the Constitution of India.

By impugned order four applications filed by petitioner/ defendant under Order 13 Rule 10, Order 26 Rule 10, Order 11 Rule 11 and Order 6 Rule 17, Code of Civil Procedure 1908 have been rejected.

The petitioners have, however, confined the challenge only to the rejection of application under Order 13 Rule 10 CPC.

Vide application under Order 13 Rule 10 CPC petitioners sought summoning of original record of decided civil suit No. 52 A/1999 from record room, Satna to demonstrate from the written statement filed therein by the plaintiff who had put his thumb impression for the purpose of demonstrating that the plaintiff therein had admitted the fact that the suit property is joint family property. The original record were summoned as the petitioner's/defendant's application for taking certified copy of joint written statement on record was turned down on 17.11.2009.

Trial Court rejected the application by impugned order on the ground that the suit is at the final stage of hearing. The order is being challenged on the ground that Trial Court has failed to exercise the jurisdiction vested in it.

Subrule (1) of Rule 10, Order 13 Rule CPC provides that (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Thus, for the inspection the trial court could have summoned the record and instead of reopening the case as apprehended, could have considered it at the time of final hearing.

In view whereof while setting aside the order rejecting the application under Order 13 Rule 10 CPC, the trial court is directed to summon the record of Civil Suit No. 52 A/1999 and examine the same at the time of final hearing.

Petition is allowed to the extent above. No costs.

(SANJAY YADAV) JUDGE Vivek Tripathi

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