

Chhatra Singh Vs. Karan Singh

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SooperKanoon Citation : sooperkanoon.com/1047295

Court : Madhya Pradesh

Decided On : Feb-25-2013

Appellant : Chhatra Singh

Respondent : Karan Singh

Advocate for Def. : Shri. Kishore Roy, Shri. Lalji Kushwaha, Shri. Umesh Trivedi, Shri. V.K.Lahariya, Shri. Anurag Tiwari, Shri. R.P.Khare, Shri. Rajendra Singh, Shri. R.K.Thakur

Advocate for Pet/Ap. : Shri. K.N.Agrawal, Shri. R.K.Pandey, Shri. Amitabh Gupta, Shri. Sanjay Sarvate, Shri. Pranay Verma, Shri. Ashok Tiwari, Shri. Santosh Yadav, Shri. Surendra Khare, Shri. P.N.Mishra, Shri. A.K.Singh, Shri. K.K.Patel, Shri. Riyaz Mohd

Judgement :

1 C.R.No.131/2011 25.02.2013 Shri K.N.Agrawal, learned counsel for the applicants.

Shri Kishore Roy, learned counsel for the respondent No.5 to 7.

None for respondent No.9/State.

Heard on the question of admission.

This revision application under Section 115 C.P.C. has been filed by the defendants Nos.1 to 6 against the impugned order dated 13.01.2011 passed by learned District Judge, Dindori, whereby their application under Order 7 Rule 11 C.P.C. has been rejected.

The contention of Shri Agrawal, learned counsel appearing for the defendants is that the suit has been filed for declaration of right, partition, injunction and to declare the sale deed void.

His further contention is that in a suit for partition, the co-parceners are necessary party and because the respondents have not impleaded them as party, the suit is barred under the law, hence the application under Order 7 Rule 11 C.P.C. was filed by the defendants, which was rejected by the learned trial Court.

It has also been put forth by him that ad-valorem court fees ought to have been paid by the plaintiffs particularly when the suit for declaration to set aside the sale deed has been filed.

Considered the submissions.

2 On bare perusal of the impugned order as well as the copy of the plaint, this court finds that a suit for injunction, partition, declaration of share and for declaring the sale deed void, which was executed by some of the co-parceners of HUF has been filed by the plaintiff.

It has been fairly contended by learned counsel for the defendants-applicants that plaintiffs were not party in the sale deed.

Hence, according to me, the learned trial Court rightly held and decided that because plaintiffs were not party in the sale deed, therefore, they are not bound to pay the ad-valorem court fees.

So far as the objection in regard to necessary or proper party, as well as not impleading of co-parceners as party in the suit is concerned, suffice it to say that such objection may be raised in the written statement, if already not raised, the same will certainly be decided by the trial Court after framing necessary issues in

that regard alongwith other issues at the time of deciding the suit.

With the aforesaid observations, without interfering in the impugned order, this revision application is disposed of.

Registrar (Judl.) is hereby directed to send a copy of this order to the District Judge, Chhatarpur with a direction that the trial Court may not proceed with the trial of the suit.

(A.K.Shrivastava) Judge g

4. 25.02.2013 Shri R.K.Pandey, learned counsel for the applicant.

I.A.No.677/2013 has been filed to correct the typing error in the application for substitution of legal representatives.

The contention of the learned counsel for the applicant is that instead of writing the correct name Kalabai incorrect name Lalabai has been mentioned in the application under Order 22 Rule 4 C.P.C.(I.A.No.2438/2004).Looking to the averments made in the application, the same is hereby allowed.

Let necessary correction in the application (I.A.No.2438/2004) be carried out during the couRs.of the day.

(A.K.Shrivastava) Judge g

25. 02.2013 Shri Amitabh Gupta, learned counsel for the applicant.

Shri B.D'Silva, learned Sr.Advocate with Shri Ishan Soni, Advocate for the respondents.

I.A.No.6291/2012 has been filed seeking exemption to file certified copy of the impugned order.

No ground is made out for exemption.

Learned counsel for the applicant is hereby directed to file certified copy of the order.

(A.K.Shrivastava) Judge gn 6 C.R.No.470/2004 25.02.2013 Shri R.S.Tiwari and Shri Anurag Tiwari, Advocates for the applicants.

Heard.

This revision application has been filed under Section 115 of C.P.C.against the order dated 21.06.2004 passed by learned FiRs.Additional District Judge, Narsinghpur in Misc.

Civil Appeal No.1/2004, whereby the order dated 23.12.1998 passed by learned Civil Judge Class II, Narsinghpur in MJ.No.5/98, by which the application under Order 9 Rule 13 C.P.C.filed by the applicants has been dismissed, has been affirmed.

A civil suit for eviction on the relationship of land lord-tenant was filed by plaintiff-land lord long back in the year 1978 and the civil suit was registered as Civil Suit 32-A/78.

Despite defendant Motilal Agrawal was served, he did not appear.

Eventually he was proceeded exparte and the suit was decreed on 26.02.1979 in ex-parte.

Later on the decree was put to execution on 14.02.1990.

Thereafter an application under Order 9 Rule 13 C.P.C.was filed by the applicants on 18.12.1998.

Learned trial Court rejected that application and the appeal, which was filed by the applicants has also been dismissed by the impugned order.

The contention of learned counsel for the applicants is that sufficient ground is made out in the 7 application to condone the delay filing application under Order 9 Rule 13 C.P.C.to set aside the exparte decree but the two courts below erred in law in rejecting the application.

Considered the submissions.

Indeed looking to the prolonged litigation of eviction, this court finds that when the decree was put to execution in the year 1990, on 18.12.1998 an application to set aside the exparte decree was filed which is ex-facie barred by time.

The learned two courts below rightly held that sufficient ground is not made out to condone the delay and rightly dismissed the application under Order 9 Rule 13 C.P.C.I have gone through the order passed by the two courts below, I find no illegality in the impugned order.

This revision application is accordingly dismissed.

Execution of decree has been stayed by this Court on 29.07.2004.

Registrar(Judl.) is hereby directed to intimate the execute court that revision application has been dismissed by sending a copy of this order so that execution proceedings may be not proceeded.

(A.K.Shrivastava) Judge g

25. 02.2013 Shri Sanjay Sarvate, learned counsel for the applicant.

Shri Lalji Kushwaha, learned counsel for the respondent.

Shri D.K.Melai, learned counsel submits that he has filed an application (I.A.No.8287/2012) to implead three persons as respondents in this revision.

Let reply of this application be filed by Shri Sanjay Sarvate, learned counsel for the applicant as well as Shri Lalji Kushwaha, learned counsel for the respondent.

List this application after fortnight.

Interim order passed earlier to continue till further ordeRs.(A.K.Shrivastava) Judge gn 9 C.R.No.50/2005 25.02.2013 Shri Pranay Verma, learned counsel for the applicant.

Shri Umesh Trivedi, learned counsel for the respondents.

Although today the matter has been listed for orders but the learned counsel for the parties submit that the revision itself be heard finally.

Prayer is accepted.

This revision application is heard finally.

Order dictated, signed and dated separately.

(A.K.Shrivastava) Judge g

25. 02.2013 Shri Ashok Tiwari, learned counsel for the applicant.

Shri V.K.Lahariya, learned counsel for respondent No.2.

Shri Anurag Tiwari, learned counsel for respondent Nos.3 to 8.

On the prayer made by learned counsel for the applicant, list in the next week.

(A.K.Shrivastava) Judge g

25. 02.2013 Shri Santosh Yadav, learned counsel for the applicant.

As prayed, list in the next week.

(A.K.Shrivastava) Judge g

25. 02.2013 I.A.No.1486/2013 has been filed to change the counsel.

Appellant has engaged Shri Surendra Khare, Advocate to argue the appeal on his behalf.

Registry is hereby directed to reflect the name of Shri Surendra Khare as counsel for the appellant on submitting the vakalatnama.

I.A.is accordingly disposed of.

List this appeal after fortnight.

(A.K.Shrivastava) Judge g

25. 02.2013 None for the applicants.

Shri R.P.Khare, learned counsel for the respondents.

The matter was taken up for hearing at 11 A.M.in the fiRs.round but none appeared on behalf of the applicant.

The matter is again taken up for hearing at 4.20 P.M.but counsel for the applicant is not present.

This Court on 03.07.2012 already directed that if the matter is not argued on the next date of hearing, the stay order shall stand automatically vacated.

Since the matter was not argued, the peremptory order dated 03.07.2012 is triggered and set in motion and stay is hereby vacated.

Registrar (Judl.) is hereby directed to inform the court below that stay has already been vacated.

List after a week.

C.C.as per rules.

(A.K.Shrivastava) Judge gn 1 M.C.C.No.661/2004 25.02.2013 Shri P.N.Mishra, learned counsel for the applicant fairly submits that he does not want to press the M.C.C.because the divorce decree has already been passed and the suit has been finally disposed of.

Accordingly this MCC is hereby dismissed as not pressed.

(A.K.Shrivastava) Judge gn 1 F.A.No.679/2004 25.02.2013 Shri A.K.Singh, learned counsel for the appellants.

Shri Rajendra Singh, learned counsel for the respondent Nos.1 to 3.

I.A.No.2366/2013 has been filed by the appellants to withdraw this appeal.

This application is hereby allowed.

This appeal is accordingly dismissed as withdrawn.

Parties to bear their own costs.

(A.K.Shrivastava) Judge g

25. 02.2013 Shri K.K.Patel, learned counsel for the applicant.

Heard on the question of admission.

Issue show cause notice to the respondents on payment of process fee within a week.

Service be made by registered AD post as well as ordinary post.

(A.K.Shrivastava) Judge g

25. 02.2013 Shri Riyaz Mohd., learned counsel for the appellant.

Shri R.K.Thakur, learned counsel for the respondent.

I.A.No.7410/2010 has been filed to vacate the stay order.

Learned counsel for the respondent submits that the present suit for declaration, which has been filed by the plaintiff has been dismissed and it was held that the property in question is of HUF and therefore, a civil suit is filed for partition, which has been stayed by this court, therefore, he has filed the present application to vacate the stay order.

Shri Riyaz Mohd.

learned counsel for the appellant submits that there is no stay order passed by this court staying the partition suit and therefore, the application be dismissed.

On bare perusal of the order sheet, it does not transpire that the partition suit has been stayed by this court.

Eventually, no ground is made out to vacate the stay order and this application is hereby dismissed.

(A.K.Shrivastava) Judge g

25. 02.2013 Shri S.

Tripathi, learned counsel for the appellant.

I.A.No.201/2013 has been filed to hear this appeal at an early date.

Learned counsel for the appellant submits that the suit is of the year 1987 and therefore, the appeal, which is pending for last nine years be heard at an early date.

This contention is accepted.

List this appeal for final hearing in the fiRs.week of April, 2013.

(A.K.Shrivastava) Judge gn

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