

Santosh Kumar Agrawal Vs. Santosh Kumar Agrawal

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Court : Madhya Pradesh

Decided On : Jan-07-2013

Appellant : Santosh Kumar Agrawal

Respondent : Santosh Kumar Agrawal

Advocate for Pet/Ap. : Shri. Priyank Khandelwal

Judgement :

W.P.NO.21478/12 07-01-2013 Shri Priyank Khandelwal, learned counsel for the petitioner.

Shri A.K.Chourasia, learned Panel Lawyer for respondent no.2 on advance notice.

Challenging the orders dated 07-12-2010 and 26-11-2012 passed by the Second Civil Judge Class-II, Hoshangabad rejecting the application filed by the petitioner under Order 16 Rule 1 and 2 read with section 151 C.P.C.in the matter of summoning one Ramesh Prasad Sahu, a patwari for recording evidence, this petition has been filed.

The petitioner is a plaintiff and has filed suit in question seeking relief of declaration and injunction.

It is the case of the petitioner that he is owner of the land bearing KhaSr.No.180/2, area 7 acres and certain other land bearing KhaSr.No.180/4, area 7 acres situated in village Mahendrawadi, Tehsil Babai, District Hoshangabad.

It was the case of the petitioner that defendant Santosh Kumar Agrawal in collusion with the revenue authorities got his name mutated in the revenue record and based on the same is interfering with the possession.

The suit was filed for declaring the order of mutation dated 13-08-2007 as null and void and for injecting the defendant from interfering with the petitioner's right to possession over the property , defendant had filed written statement and had raised question on the ground that the suit property was purchased by his father by registered sale deed and since then he is in possession.

The petitioner filed an 2 application for summoning the Patwari namely Ramesh Prasad Sahu to examine him as a witness.

This application was rejected on 07-12-2010 vide Annexure P-3 and it was held by th court in this order that the application has been filed belatedly, it is only to delay the process and therefore, the same was dismissed with cost.

Thereafter from 07-12-2010 till 26-11-2012 for more than two years nothing was done and when on 26-11-2012, the same prayer was again repeated, the application is rejected vide order dated 26-11-2012 and it is held by the court that once order dated 07-12-2010 has attained finality and it has not been challenged, a second application for the same relief is not maintainable.

It is not when the second application is dismissed, then petitioner has filed this petition challenging both the orders dated 07-12-2010 and 26-11-2012.

The petitioner has stated that after order was passed on 07-12-2010, the petitioner asked the Patwari to appear as a witness .

In the beginning Ramesh Prasad Sahu agreed but not when he has disagreed, therefore the application under section 151 is filed.

If the petitioner had any grievance in the matter, he should have approached this court within a reasonable time after the order was passed on 07-12-2010 the petitioner did not challenge this order for more than 2 years and not after a period of more than 2 years on the ground with regard to consent given by the Patwari,

no case is made out for interfering with an interlocutory order passed on 07-12-2010.

The discretion exercised by the court in rejecting second application on 26-11-2012 and the reasons given therein are also reasonable and cannot be termed as perverse or erroneous to such extent that the interference in the matter is called for in these proceedings under Article 227 of the Constitution of India.

Taking note of the totality of the circumstances and considering the fact that the petitioner did not challenge the order dated 07-12-2010 within reasonable time, I see no reason to interfere into the matter at this stage in an interlocutory proceedings under Article 227 of the Constitution of India.

In view of the above, the petition stands dismissed.

(RAJENDRA MENON) JUDGE hsp

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