

Veerendra Kumar Soni Vs. Ashok

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Court : Madhya Pradesh

Decided On : Apr-26-2013

Appellant : Veerendra Kumar Soni

Respondent : Ashok

Judgement :

Writ Petition No ::

7181. / 2013 Veerendra Kumar Soni versus Ashok and others 26.04.2013.

Shri Anil Dwivedi for the petitioner.

Challenging an interlocutory order passed by the trial court rejecting an application under Order 26 Rule 9 CPC, in the matter of appointing a Commission for demarcation of the property in question, this writ petition has been filed.

Respondents 1 to 3 have filed the suit in question for declaration and injunction.

In the suit, proceedings for injunction under Order 39 Rule 1 and 2 CPC is pending and for the purpose of finalizing the question of injunction, petitioner wanted appointment of a Commission for demarcation of the property and submission of a report.

The said application has been rejected by the court below mainly on the ground that at this stage when proceeding for considering the application for temporary

injunction under Order 39 Rule 1 and 2 is in progress and when only existence of a prima facie case, balance of convenience and irreparable loss is to be seen, appointment of a Commission for collecting evidence is not necessary and it is held that the proceeding for temporary injunction can be finalized on the basis of affidavit of the parties.

Holding so the application has been rejected by saying that for deciding the question of injunction and collecting evidence, the application is not maintainable.

The discretion exercised by the Court and the reasons given for rejecting the application cannot be termed as perverse or erroneous to such an extent that interference into the matter is called.

Accordingly, the petition stands dismissed.

(RAJENDRA MENON) JUDGE A.K.S./-

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