

Ronya Vs. Funda Bai

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Court : Madhya Pradesh

Decided On : Sep-25-2013

Appellant : Ronya

Respondent : Funda Bai

Advocate for Pet/Ap. : Shri. S.K.Dwivedi

Judgement :

1 W.P No.15638 of 2013 25.9.2013 Shri S.K.Dwivedi, counsel for the petitioners. He is heard on the question of admission.

The petitioners/plaintiffs have filed this petition being aggrieved by the order dated 17.7.13 Annex.P-7 passed by II ADJ.Multai in MA No.7-A/13 affirming the order dated 7.3.13 Annex.P-6 passed by I Civil Judge-II, Multai in Co.No.3-A/13 whereby the petitioners application filed under Order 39 rule 1 and 2 of the CPC for issuing ad interim injunction restraining the respondents to interfere in possession of the petitioners with respect of the disputed land and also to restrain the revenue court to hold the proceedings filed under section 178 of the Madhya Pradesh Land Revenue Code, 1959 with respect of the same land, has been dismissed.

2.

In the course of the arguments, after arguing for some time, in response of some query of the court, petitioners counsel has made his limited prayer for appropriate

direction against the respondents restraining them to transfer, alienate or create any third party interest with respect of the disputed property till pendency of the suit.

3.

In view of such limited prayer, on asking the counsel whether such prayer has been made in the impugned application, on which, after perusing the same he said that no such specific prayer has been made in the application Annex.P-2, on which, on asking whether in the available circumstances, in the lack of the prayer in the application whether the aforesaid limited prayer could be considered in the writ jurisdiction under Article 227 of the Constitution of India and at the fiRs.time without pleading such prayer could be considered by this bench, on which, the petitioners counsel seeks permission to withdraw this petition as not pressed with liberty to file the appropriate application before the trial court for issuing ad interim injunction against the private respondents restraining them to transfer, alienate or create any third party interest with respect of the 2 W.P No.15638 of 2013 disputed property till pendency of the suit with a further prayer for appropriate direction to protect the right of the petitioner till deciding the aforesaid application by the trial court.

4.

On consideration, without expressing any opinion on merits or demerits of the impugned ordeRs.this petition is dismissed as withdrawn and not pressed by extending the liberty to the petitioners to file the aforesaid applications for which the limited prayer is made before this court.

Pursuant to it, the trial court is directed that on filing such application on behalf of the petitioneRs.the same be considered on its own merits and after extending the opportunity to the other side and pass appropriate order to protect the interest of both the parties without influencing from any observation or findings given by such court in the impugned order or by this court in the present order.

It is further directed that if such application is filed within 15 days from today then the same be considered and decided on its own merits as directed above within further 30 days.

It is also observed that in any case, the parties shall be governed with the provision of section 52 of the Transfer of Property Act.

C.C as per rules.

(U.C.Maheshwari) Judge MKL

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