

Smt. Pyari Devi Vs. Smt. Lalli Devi

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Court : Madhya Pradesh

Decided On : Oct-07-2013

Appellant : Smt. Pyari Devi

Respondent : Smt. Lalli Devi

Advocate for Def. : Shri. Bhupendra Shukla, Shri. R.K.Tripathi

Advocate for Pet/Ap. : Shri. Niraj Asar

Judgement :

Writ Petition No.3954/2010 07.10.2013 Shri Niraj Asar, learned counsel for the petitioners. Shri Bhupendra Shukla, learned counsel for respondent Nos.1, 2- A to 2-D and 3.

Shri R.K.Tripathi, learned counsel for respondent No.21.

Shri S.M.Lal, Learned Govt.

Adv for respondent No.31.

None for the other served respondents.

It is apparent from the record that some of the respondents between 4 to 30 are not served.

In the available circumstances, question raised in this petition could be adjudicated effectively only in presence of the petitioners and the respondent No.1 - plaintiff and the presence of other unserved respondents are not required.

Consequently, notices against other unserved respondents are hereby dispensed with, if the same are not served.

Also heard on IA No.12242/13, this is an application on behalf of respondent No.1 for early hearing of this petition.

For the reasons stated in it, the same is allowed and the petition is taken up for hearing.

In the available circumstances of the case at the request of the parties and with their consent, instead to hear this petition on admission, the same is heard for final disposal.

ORDER

(Oral) The petitioners - defendant Nos.1 to 9 have filed this petition under Article 227 of the Constitution of India being aggrieved by the order dated 17.12.2009 passed by the FiRs.Additional Civil Judge, Class-I to the Court of FiRs.Civil Class-I, Rewa in Co.No.149-A/08 whereby their application filed under Order 14, Rule 5 of CPC, (Ann.

P-4) for framing additional issues in the matter in the light of the special pleadings of the WS has been dismissed.

Having heard the counsel at length, keeping in view their arguments, I have carefully gone through the pleadings of the parties the plaint and special pleadings of the WS (Ann.

P-1 & P-2).so also the averments of the aforesaid IA, (Ann.

P-4) and its reply, (Ann.

P-5) alongwith the impugned order, (Ann.

P-6).It is settled proposition of law that issues should be framed by the court on all the disputed questions, including the pleadings of the WS.

If any question is raised by the defendant in his defence in WS.

In view of such settled legal position, on examining the case at hand, it is apparent that while framing the issues by the trial court in the matter, some martial issues in light of special pleading of the WS, (Ann.

P-2).relating to the Will dated 27.4.1988 as alleged executed by one Chunmuna Devi and about non impleading the alleged party to Puddi, D/o Durga, whether she is a necessary party in the matter have not been framed.

After perusing the aforesaid pleadings, in the available circumstances, proposed issues as mentioned in Annexure P-4.

In view of aforesaid by allowing this petition, the impugned order is set aside and by allowing the impugned application, Ann.

P-4, the trial court is directed to frame the additional issues stated in such application.

However, it is made clear that the trial court shall be at liberty to modify the language of the proposed issued as stated in Annexure P-4.

The trial court is also directed to frame such issues before recording the evidence of the parties, so they may adduce their evidence in the light of such issues also.

There shall be no order as to cost.

The petition is allowed, as indicated above.

(U.C.Maheshwari) Judge bks

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