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Court : Madhya Pradesh

Decided On : Jan-02-2014

Appellant : Phoolchandra

Respondent : Habib Ahmad @ Pyare Miya Judgement Given By: Hon'ble Shri Justice Keshav Kumar Trivedi

Advocate for Pet/Ap. : Shri. Avinash Zargar

Judgement :

W.P.No.21561/2013(I) 02.01.2014 Shri Avinash Zargar, learned counsel for the petitioners. Heard on the question of admission.

This petition under Article 227 of the Constitution of India, is directed against the order dated 1.8.2012, by which the application made by the petitioner No.1 for his impleadment as a plaintiff in the suit filed by the petitioner No.2, under Order 1 Rule 10 of the Code of Civil Procedure (hereinafter referred to as CPC for brevity) has been rejected.

The petitioner No.2 filed a suit against the respondents on the strength of an agreement executed in between petitioners No.1 and 2, for declaration of rights and permanent injunction stating that the petitioner No.2 has obtained the land in suit under the agreement aforesaid from petitioner No.1 and respondents have no

right to encroach on the said land nor to make construction of any building on the same.

The petitioner No.1 moved an application under Order 1 Rule 10 of CPC, stating that since the plot in suit was, in fact, allotted to him by the State Government, which was agreed to be sold to the petitioner No.2 by the agreement referred to herein above, the petitioner No.1 would be necessary party to be impleaded as plaintiff in the suit.

He further contended in the application that he was not interested to transfer the plot in suit in favour of the petitioner No.2 any longer and, therefore, he was a necessary party to be impleaded as plaintiff in the suit.

The trial Court after examining the application rejected the same holding that if the petitioner No.1 was not willing to transfer the plot in suit in favour of the plaintiff, he was required to approach the Court of law by filing an independent suit, but he cannot be impleaded as a plaintiff in the suit filed by the petitioner No.2.

Such an application is rejected by the impugned order, therefore, this writ petition is required to be filed.

It is contended by learned counsel for the petitioner that in the given circumstances, the petitioner No.1 was necessary party to be impleaded in the suit and this particular aspect, though was not opposed by the plaintiff, who is dominus litis, the application was wrongly rejected.

It is, thus, contended that the order impugned is liable to be set aside and the application of the petitioner No.1 is liable to be allowed.

The whole submission raised by learned counsel for the petitioners is misconceived.

It was not an application made by the petitioner No.2 for impleadment of petitioner No.1 as a plaintiff in the suit.

In fact, the plaintiff is the dominus litis and it was only the plaintiff, who could have made an application in such circumstances for impleadment of yet another person

as party to the suit.

A person like petitioner No.1, who has transferred the land under an agreement to the petitioner No.2, if he is not willing to execute the agreement or is willing to rescind with the agreement has to approach the Courts of law independently.

It is unknown under the CPC that a plaintiff can claim a relief against another plaintiff and, therefore, such an application made by the petitioner No.1 for his impleadment as plaintiff in the suit filed by the petitioner No.2, was rightly rejected.

In view of the aforesaid, no error of law is committed by the Court below in rejecting the application of the petitioner No.1.

The writ petition fails and is hereby dismissed.

(K.K.Trivedi) Judge A.Praj.

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