SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

idris Vs. Mubarik Dead Th:legal Heirs Rubina Judgement Given By: Hon'ble Shri Justice Sanjay Yadav

idris Vs. Mubarik Dead Th:legal Heirs Rubina Judgement Given By: Hon'ble Shri Justice Sanjay Yadav

SooperKanoon Citation : sooperkanoon.com/1124449

Court : Madhya Pradesh

Decided On : Jan-21-2014

Appellant : idris

Respondent : Mubarik Dead Th:legal Heirs Rubina Judgement Given By: Hon'ble Shri Justice Sanjay Yadav

Advocate for Pet/Ap. : Shri. Ranjit Singh

Judgement :

1 W.P. No. 19499 Of 2012 21.1.2014 Shri Sameer Seth, learned counsel with Shri Ranjit Singh, learned counsel for petitioner.

Heard on admission.

Order dated 25.1.2012 passed in Civil Suit No. 2A/2011 by FiRs. civil Judge Class II, Khandwa to the extent it rejects plaintiff's (petitioner herein)application under Order 7 Rule 14, Code of Civil Procedure, 1908 is being assailed vide this petition under Article 227 of the Constitution of India.

Suit at the instance of the petitioner/plaintiff is for eviction and permanent injunction in respect of the agricultural land bearing KhaSr. No. 192/2 area 2.66 acre.

Petitioner/ plaintiff after framing of issue set out the matter for evidence, when the plaintiff as also defendant filed certain applications. Since the present case is against an order regarding rejecting of application under Order 7 Rule 14 CPC, orders on other applications are not gone into.

That, vide application under Order 7 Rule 14 CPC the plaintiff sought leave to file Khasra Panchshala, map B1 and the report by Tahsildar stating that the same are relevant documents and that the Xerox copy thereof are already.

The Trial Court taking note of the fact that xerox copy are not filed and that the document except the report by Tahsildar were with the petitioner/plaintiff when the suit was filed and could have filed the document, rejected the application holding that the Tahsildar report though being of the date after filing of 2 civil suit but was filed at a belated stage when the civil suit was posted for recording of plaintiff's evidence.

The order has been questioned on the ground that the trial court has grossly erred in rejecting the application.

Subrule (1) of Rule 14 of Order 7 CPC stipulates that Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such document in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

Subrule (2) of Rule 14 of Order 7 CPC provides that "Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is." The petitioner/plaintiff fails to establish, that it has been mentioned in the suit plaint regarding nonavailability of the document in question.

Furthermore subrule (3) of Rule 14 of Order 7 stipulates that "A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in

evidence on his behalf at the hearing of the suit." Thus, incumbent it is upon the seeker of the leave to satisfy that the documents which he proposes to file after commencement of trial were not available with him at the time when the suit was filed before the issues were framed. In the 3 case at hand all the documents which the petitioner/plaintiff intends to file were of presettlement of issue stage. Therefore, the Trial Court was justified in rejecting the application as would warrant any interference under Article 227 of the Constitution of India.

Consequently, the petition fails and is dismissed.

(SANJAY YADAV) JUDGE Vivek Tripathi

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com