THE HIGH COURT OF MADHYA PRADESH

Misc. Petition No.4924/2018

(Vishnu and another Vs. Tikaram and others)

Jabalpur, Dated: 24/01/2020

Shri Ashish Shroti, learned counsel for the petitioners.

Shri B.K. Shukla, learned counsel for the respondent No.3.

Heard finally with consent.

By this misc. petition under Article 227 of the Constitution of India, plaintiffs in the suit have challenged the order of the trial Court dated 26/09/2018 whereby the application for the respondents No.3 and 4 filed under Order 1 Rule 10(2) read with Section 151 of the CPC has been allowed.

Learned counsel appearing for the petitioners submits that the trial Court has committed an error in allowing the said application on the plea that the petitioners have colluded with the respondents No.1, 2, 5 and 6. He further submits that the suit being a partition suit, the transposition was not necessary.

As against this, learned counsel for respondent No.3 has supported the impugned order.

Having heard the learned counsel for the parties and on the perusal of the record, it is noticed that the petitioners have filed the suit for declaration and permanent injunction. Counsel for the petitioner has not disputed before this Court that the suit is infact in nature of a partition suit. The trial Court while deciding the application under Order 1 Rule 10(2) of the CPC has taken note of the fact that the respondent No.1 is father of the petitioners, respondent No.2 is his son and the respondents No.5 and 6 are his daughters. The trial Court has also noted the fact that the respondents No.1, 2, 5 and 6 have filed their written statement completely admitting the plea raised in the suit and in the evidence and affidavit-in-chief produced by the respondents No.1 and 2 also they have supported the petitioners. In this

background, the trial Court has reached to the conclusion that the respondents No.1, 2, 5 and 6 have colluded in the matter. It has also been noted that earlier also at the stage of the plaintiffs' evidence, an objection was taken by the respondents No.3 and 4 in this regard but since no formal application was filed, therefore, the objection was rejected.

In the aforesaid background, by allowing the application under Order 1 Rule 10(2) of the CPC, the trial Court has directed transposition of respondents No.1, 2, 5 and 6 as the plaintiffs. Order 1 Rule 10(2) of the CPC gives discretion to the trial Court to pass an appropriate order for strike out or add either plaintiff or any person as plaintiff or defendant to effectually and completely adjudicate upon and settle all the questions involved in the suit.

In the facts of the present case, the trial Court has not committed any patent illegality in exercising the said jurisdiction.

Even otherwise, the Supreme Court in the matter of **Jai Singh and others Vs. Municipal Corporation of Delhi and Another** reported in 2010(9) SCC 385 while considering the scope of interference under Article 227 of the Constitution, has held that the jurisdiction under Article 227 cannot be exercised to correct all errors of judgment of a court, or tribunal acting within the limits of its jurisdiction. Correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

Having regard to the aforesaid, I am of the opinion that no case for interference in the impugned order of trial court is made out. The misc. petition is accordingly dismissed.

(Prakash Shrivastava)
Judge

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