HIGH COURT OF MADHYA PRADESH

MP No.6760/2019

(Rajesh Kumar Mishra Vs. Chhotelal Saket & Ors.)

Jabalpur, Dated: 17/1/2020

Shri Vinod Kumar Dubey, learned counsel for petitioner.

Heard on the question of admission.

By this miscellaneous petition under Article 227 of the Constitution, the defendant No.1 in the suit has challenged the order of the trial court dated 4/12/2019 rejecting the petitioner's application u/S.11 of the CPC.

Learned counsel for petitioner submits that the trial court has committed an error in rejecting the petitioner's application without appreciating that the principle of *resjudicata* will be attracted in the present case because the earlier suit being CS No.184-A/2004 was dismissed, therefore, the fresh suit between the same parties and the application for temporary injunction is not maintainable.

Having heard the learned counsel for petitioner and on perusal of the record, it is noticed that the respondent No.1 to 3 have filed the suit for permanent injunction to restrain the petitioner from interfering in his possession. The petitioner had filed an application u/S.11 of the CPC with the plea that the earlier suit being CS No.184-A/2004 was filed by the petitioner's father in which the father of the respondent plaintiff was also a party wherein the temporary injunction was granted in favour of the petitioner's father, therefore, the subsequent application for temporary injunction in the present suit is not maintainable and the present suit is also hit by the principle of *resjudicata*. The respondents in the reply had disclosed that the earlier suit being Cs No.184-A/2004 was dismissed for want of prosecution by order

dated 13/10/2017 and the petitioner had filed an application for restoration, therefore, with the dismissal of the suit, the order of temporary injunction passed in that case had also come to an end. The court below has taken the view that the requirement of Sec.11 is not satisfied in the matter. It has also been held that the issue of *resjudicata* which the petitioner is raising is a mixed questions of fact and law which is required to be decided on the basis of the evidence led by the parties. The view which is taken by the trial court about the *resjudicata* being mixed question of fact and law is duly supported by the judgment of the Supreme Court in the matter of **Vaish Aggarwal Panchayat Vs. Inder Kumar and Ors. AIR 2015 SC 3357** and **V.Rajeshwari (Smt) Vs. T.C.Saravanabava (2004) 1 SCC 551**.

Having regard to the aforesaid, I am of the opinion that the impugned order passed by the trial court does not suffer from any patent illegality.

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.

The miscellaneous petition is accordingly **dismissed.**

(Prakash Shrivastava)
Judge

vm

Varghese Mathew
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