

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

Civil Revision No.98/2012

Sanjeev Lunkad
 S/o Shri Vijay Kumar Lunkad,
 Aged – 40 years,
 Occ. Business,
 R/o – 33/2 New Palasia, Indore Petitioner

Vs.

Mubarik S/o Heera
 and others. Respondents

Shri R.T. Thanewala, learned counsel for the petitioner.
 Shri S.J. Polekar, learned counsel for the respondent No.1.
 Ms. Anjali Jamkhedkar, learned counsel for the respondent No.4.
 None for respondents No.2 and 3.

Whether approved for reporting :

ORDER

(Passed on 30/6/2014)

1/ This writ petition under Section 115 of the CPC is against the order of the trial Court dated 5.3.2012 rejecting the petitioner's application under Order 7 Rule 11 of the CPC for rejection of plaint.

2/ In brief, the respondent No.1 has filed a suit for declaration and permanent injunction and the petitioner who is one of the defendant in the suit, had filed an application under Order 7 Rule 11 of the CPC for rejection of the plaint on the ground that the respondent No.1 had sold the suit land on

25.2.2010 to Smt. Shameem Bi, therefore, he had lost his right to obtain any decree from the Court. The application was opposed by the respondent No.1 raising the plea that the fact mentioned in the application will have no effect on the suit and that the case is at the final stage of examination of defendant's witnesses. The trial Court by the impugned order dated 5.3.2012 has rejected the petitioner's application under Order 7 Rule 11 of the CPC.

3/ Learned counsel appearing for the petitioner submits that after executing the sale deed dated 25.2.2010 in favour of Smt. Shameem Bi in respect of the suit land, the respondent No.1 has no cause of action to proceed with the suit. He has further submitted that the respondent No.1 has committed a fraud upon the court by not disclosing the said fact.

4/ As against this, learned counsel for the respondent No.1 submits that the trial Court has not committed any error in rejecting the application under Order 7 Rule 11 of the CPC and the reason which has been assigned by the trial Court, is just and proper.

5/ I have heard the learned counsel for the parties and perused the record.

6/ A perusal of the plaint reveals that the respondent No.1 has made an allegation in the plaint that the suit land belonging to the respondent No.1 was sold by the respondent No.2 by showing himself to be the owner of the land by fraudulently affixing his photograph and projecting him to be the father of the respondent No.1 and by executing the sale deed in the name of father of the respondent No.1 in favour of the respondent No.3 through the petitioner. In the plaint the respondent No.1 has prayed for declaring the sale deed dated

21.9.2005 executed by the respondent No.2 through the petitioner in favour of the respondent No.3 to be fabricated and void. In view of the said plaint averment, it cannot be said that on account of the subsequent execution of the sale deed dated 25.2.2010 by the respondent No.1 in favour of Smt. Shameem Bi, the cause of action for filing the suit has come to an end. Such a plea cannot be accepted in view of the fact that any decision in the present suit will effect the title which is allegedly transferred by the respondent No.1 by the subsequent sale deed. That apart the petitioner is required to prove the execution of the sale deed dated 25.2.2010 by the respondent No.1 in favour of Smt. Shameem Bi in respect of the suit land, by adducing the cogent evidence. Undisputedly the suit itself is at the advance stage of cross-examination of the defendant witnesses.

7/ In these circumstances, the trial Court has committed no error in rejecting the petitioner's application under Order 7 Rule 11 of the CPC. The order passed by the trial Court does not suffer from any error. Thus, no ground for interference is made out. The revision petition is accordingly dismissed.

Let the record of the trial Court be returned immediately. The parties are directed to appear before the trial Court on 21.7.2014.

(PRAKASH SHRIVASTAVA)
J u d g e

Trilok.