

HIGH COURT OF MADHYA PRADESH
MP No.2922/2019
Virendra Singh & Ors. vs. Krishnapal Singh & Ors.

Gwalior, dtd. 10/12/2019

Shri H.K. Shukla, learned counsel for the petitioners.

This petition under Article 227 of the Constitution of India has been filed against the order dated 17/5/2019 passed by Additional Commissioner, Chambal Division, Morena in case No.17/Miscellaneous/2018 by which the interim order dated 5/6/2018 has been vacated.

The necessary facts are that partition proceedings were initiated, however in view of the interim order passed by the civil court, the same were kept in abeyance. However, the civil suit as well as the appeal has been dismissed and S.A. No.1214/2018 is pending.

It is submitted that after the dismissal of civil appeal, the Tahsildar has resumed the partition proceedings which were stayed by the Additional Commissioner, Chambal Division, Morena by order dated 5/6/2018. It is submitted by Shri Shukla that the Additional Commissioner, Chambal Division, Morena has vacated the stay order dated 05/6/2018 and since Second Appeal No.1214/2018 is pending before this Court, therefore, the interim order dated 05/6/2018 passed by Additional Commissioner, Chambal Division, Morena should not have been vacated.

Heard the learned counsel on the question of vacation of interim order.

Section 178 of MPLR Code reads as under:-

“178. Partition of holding.- (1) If in any holding, which has been assessed for purpose of agriculture under section 59, there are more than one Bhumiswami any such Bhumiswami may apply to a Tahsildar for a partition of his share in the holding:

[Provided that if any question of title is raised the Tahsildar shall stay the proceedings before him for a period of three months to facilitate the institution of a civil suit for determination of the question of title.]

[(1-A) If a civil suit is filed within the period specified in the proviso to sub-section (1), and stay order is obtained from the civil court, the Tahsildar shall stay his proceedings pending the decision of the civil court. If no civil suit is filed within the said period, he shall vacate the stay order and proceed to partition the holding in accordance with the entries in the record of rights.]

(2) The Tahsildar, may, after hearing the co-tenure holders, divide the holding and apportion the assessment of the holding in accordance with the rules made under this Code.

[(3) xxx]

[(4) xxx]

[(5) xxx]

Explanation I.- For purposes of this section any co-sharer of the holding of a Bhumiswami who has obtained a declaration of his title in such holding from a competent Civil Court shall be deemed to be a co-tenure holder of such holding.

[**Explanation II.-** xxx]”

From the plain reading of the Section, it is clear that if the civil suit is filed and the order is obtained from the civil court, then the further proceedings before the revenue authorities for partition of the holding shall be kept in abeyance, therefore, the pendency of the civil suit as well as temporary injunction are two necessary ingredients for staying the further proceedings of the partition

proceedings.

In the present case, according to the petitioner, the second appeal filed by him which has been registered as SA No.1214/2018 is still pending before the court. However, it is fairly conceded by the counsel for the petitioner that there is no interim order in the said second appeal. Thus, it is clear that the second ingredient of stay by the civil court is not satisfied.

Under these circumstances, it is clear that in absence of any stay by the civil court, the revenue authorities are not under obligation to stay the further proceedings of the partition proceedings.

Accordingly, this Court is of the considered opinion that the Additional Commissioner, Chambal Division, Morena did not commit any mistake by vacating the stay order dated 05/6/2018.

Accordingly, this petition fails and is hereby dismissed.

(G. S. Ahluwalia)
Judge