

THE HIGH COURT OF MADHYA PRADESH
M.P. No. 1551/2020
Munni Bai & others. V/s. Smt. Kubra Bee & others.
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Indore, dated : 20.03.2020

Shri Jitendra Verma, learned counsel for the petitioners/defendants No.1 to 3.

Shri Sanjay Sharma, learned counsel for the respondents/plaintiffs.

With consent of learned counsel for the parties, heard finally.

ORDER

The petitioners/defendants No.1 to 3 have filed the present petition being aggrieved by order dated 6.3.2020 whereby the application filed under Order 17 Rule 1 of C.P.C. has been dismissed.

2. Respondents/plaintiffs have filed the suit for declaration, permanent injunction and cancellation of 'Hiba' in respect of land bearing Survey Nos. 56+64/2, 57, 58/2 and 60/1 of Village Sutarkhedi, Tehsil Mhow, District Indore (hereinafter referred to as "the suit property"). The suit property was initially owned by Ismail and the plaintiffs are claiming their right and title over the suit property by virtue of succession. The suit property has been mutated in the name of defendants by virtue of oral 'Hibanama', which gave the cause of action to the plaintiffs for filing the suit challenging the 'Hibanama'.

3. The plaintiffs filed the suit on 15.2.2018. After receipt of the summons, the defendants appeared and filed the written statement on 11.7.2018. Thereafter, the trial Court

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framed the issues on 18.7.2018. The plaintiffs have concluded their evidence and at present, evidence of defendants are going on. Along with the written statement, the defendants have filed the original affidavit of Ismail executed in respect of 'Hibanama' and also filed photocopy of another affidavit of Ismail bearing Notary No.133/2007 dated 19.6.2007. The original affidavit was marked as Ex. D/6 and at the time of marking the photocopy of the affidavit in evidence at the instance of plaintiffs, the defendants came up with the plea that by mistake, the said affidavit has been filed and the same is not related with the subject matter of the suit, hence the same be ignored. The plaintiffs, after getting the photocopy of the affidavit of Ismail along with the written statement by defendants, immediately filed the application under Order 7 Rule 12 of C.P.C. seeking production of the original of the said affidavit by the defendants. The defendants filed an affidavit on 26.2.2020 that the original document is not in their possession. Thereafter, the plaintiffs filed another application u/s. 63 & 65 of the Indian Evidence Act seeking permission to prove the affidavit of Ismail as secondary evidence which was opposed by the defendants on the ground that the property mentioned in the said affidavit are different and not related to the suit property. Learned trial Court vide order dated 28.2.2020 has allowed the application by placing the reliance over the judgment of apex Court in the case of **J. Yashoda V/s. K. Shobharani : (2007) 5 SCC 730.**

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4. After passing the aforesaid order dated 28.2.2020, the petitioner filed an application under Order 7 Rule 14 of C.P.C. seeking adjournment in order to challenge order dated 28.2.2020 before this Court. Learned trial Court has fixed the case on 26.2.2020 and thereafter fixed the case on 5.3.2020. On the said date, plaintiffs filed an application seeking permission to produce Hindi translation of 'Nikahnama'. Defendants also filed an application under Order 7 Rule 14 of C.P.C. for adjournment as witnesses were not. The defendants sought time to file reply to the said application. Vide order dated 5.3.2020, learned trial Court has allowed the application under Order 8 Rule 1 read with section 151 of C.P.C. with cost of Rs.200/-. By the said order, learned trial Court has closed the right of defence of the defendants due to non-production of the defendants' witnesses – Hamidullah Qureshi and Akbar Ghosi, hence the present petition before this Court.

5. The petitioners/defendants challenged the order dated 28.2.2020 by way of M.P. No.1505/2020. Today, said petition has been dismissed today itself.

6. On 5.3.2020, the plaintiffs filed an application under Order 7 Rule 10 of C.P.C. seeking permission to file Hindi translation of 'Nikahnama'. The defendants sought time to file reply to the said application. Therefore, there was no occasion to call the witnesses for cross examination, hence, the trial Court ought to have given adjournment. Defendants were not given

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time to verify as to plaintiffs have filed correct Hindi Translation or not? On the said date, the trial Court was required to decide the application under Order 7 Rule 14 of C.P.C., therefore, the trial Court has wrongly closed the right of defence of the defendants. Hence, the order dated 5.3.2020 is hereby set aside so far it relates to closing of right to give evidence.

7. Shri Jitendra Verma, learned counsel appearing for the petitioners/defendants, submits that the trial Court is proceeding with the trial in hasty manner without giving proper opportunity to the defendants to contest the case effectively. The suit is not very old and the defendants are cooperating for early disposal.

8. Shri Sanjay Sharma, learned counsel appearing for respondents/plaintiffs opposes such prayer by submitting that after granting 10 opportunities to produce evidence, now the trial Judge has rightly closed the right, hence no interference is called for with the impugned order.

8. The plaintiffs filed the suit on 15.2.2018 and immediately thereafter the defendants have filed the written statement. Thereafter, the trial Court has framed the issues. The plaintiffs have concluded their evidence and now the case is fixed for defendants' evidence. No party is trying the delay the suit proceedings. The plaintiffs are challenging the 'Hibanama' dated 19.6.2007. There are two affidavits of Ismail. The parties have to examine the documents for their valuable rights. The suit

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is not under the category of “5 years old”. On 5.3.2020, an application was filed by the plaintiffs to produce Hindi translation of 'Nikahnama' and the defendants sought time to examine the same whether the Hindi translation is proper or not. On the said date, the trial Court has closed the right of defence of the defendants. In the opinion of this Court, the trial Court should not proceed in such a manner so that the parties may get proper opportunity to contest their case. Civil Court is a fact finding Court. It is the duty of the Court that by seeking unnecessary adjournment, opposite party should not suffer irreparable loss. The conclusion of proceedings of civil suit within short time is the need of time, but the party should not have impression that proper opportunities are not being given to them to protect its interest. This Court hopes and trust that learned trial Judge will keep this in mind while deciding the suit.

9. With the aforesaid, this petition stands disposed of.

(VIVEK RUSIA)
JUDGE

Alok/-