

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 1st OF AUGUST, 2024

CIVIL REVISION No. 27 of 2022

(SHIVVARAN SINGH (SHIVCHARAN SINGH) THAKUR (DEAD) THROUGH LR PRADEEP MISHRA

Vs

SMT. MADHUBAI W/O LATE RAMSHANKAR SINGH)

Appearance:

(SHRI R.S. YADAV – ADVOCATE FOR THE PETITIONER)

(SHRI NILESH SHARMA – ADVOCATE FOR THE RESPONDENT)

ORDER

1. Petitioner has preferred this civil revision under Section 115 of CPC being aggrieved by the impugned order dated 7.12.2021 passed by the 26th Addl. District Judge, Indore in RCSA 1100001/2012, whereby an application under Order 22 Rule 5 read with Section 151 of CPC filed by the petitioner/plaintiff has been dismissed.

2. Brief facts of the case are that the original plaintiff Shivcharan has filed a civil suit against the respondent/defendant Madhubai to declare gift deed null and void and also seeking decree of permanent injunction. During the pendency of the civil suit original plaintiff Shivcharan has been died and the applicant Pradeep Mishra has filed an application that plaintiff Shivcharan during his lifetime executed a will in his favour and through the will he has made owner of all the movable and immovable properties, which was owned by the plaintiff

Shivcharan. On the basis of the will, petitioner has preferred an application under Order 22 Rule 5 r/w S.151 CPC for his substitution as LR of the deceased Shivcharan. The trial court after hearing both the parties, dismissed the aforesaid application. Being aggrieved by the same, petitioner has filed this civil revision.

3. Learned counsel for the petitioner contended that the trial Court has ignored the law and facts of the case. Obtaining of probate certificate is not necessary in M.P. Civil court can consider the genuineness of the will. Petitioner has proved the will on the basis of evidence of attesting witnesses. Therefore, the impugned order is bad in law and it should be dismissed and application under Order 22 Rule 5 r/w S.151 of CPC filed by the petitioner should be allowed.

4. Per contra, learned counsel for the respondent/defendant opposes the prayer and prays for its rejection by supporting the impugned order passed by the trial Court.

5. Both the parties heard at length and perused the record of the trial court.

6. From perusal of the proceedings of the trial Court, it appears that the trial court while deciding the application under Order 22 Rule 5 r/w S.151 of CPC directed both the parties to adduce evidence regarding the aforesaid will. The applicant Pradeep Mishra examined himself before the trial court along with other witnesses Vishnu Yadav and Omprakash. Applicant Pradeep Mishra deposed that deceased was old aged person. After death of his wife, he was alone and unable to do any

work, therefore, the applicant used to look after him and thereafter the deceased Shivcharan has executed the will regarding the disputed house in favour of the applicant. Vishnu Yadav and Omprakash Mishra both of them corroborated the statement of Pradeep Mishra that before the death, Shivcharan Singh has executed the will in favour of Pradeep Mishra and they have attested the will by signing it as attesting witnesses.

7. Applicant Pradeep Mishra before the trial court categorically admits in his cross-examination that the deceased Shivcharan Singh was not his relative. He was only his neighbour and his mother was tenant of Shivcharan. Shivcharan belongs to Thakur community and the applicant Pradeep Mishra belongs to Brahman community. Their cast is also different. Pradeep Mishra stated that Shivcharan has executed the last will on 20.10.2011 in his favour, but plaintiff (deceased Shivcharan) has been examined before the trial Court. His cross-examination has been conducted on 18.12.2012, but Shivcharan did not state anything that he has executed any will in favour of the applicant Pradeep Mishra. Therefore, on the basis of the aforesaid, execution of the aforesaid will appears to be doubtful.

8. From perusal of the will (Ex.P/1) it appears that it has been prepared by Umesh Kumrawat Advocate but he was not examined before the trial Court. Ex.P/1 is the only certified copy of the said will. It has been typed on stamp paper but stamp vendor was not examined before the trial Court, therefore, adverse inference can be drawn against the applicant.

9. Undoubtedly as per the judgment of Division Bench of this Court in the case of *Phool Singh and others Vs. Smt. Kosa Bai and others reported in 1999(I) MPJR 352* obtaining of probate is not necessary in M.P. State. But in the instant case defendant/respondent is also claiming title over the suit property on the basis of gift deed. Therefore, applicant Pradeep Mishra and defendant both are claiming the property of the deceased Shivcharan. Hence, it appears that there is a dispute of title also. Therefore, it should be necessary that applicant Pradeep Mishra should file separate civil suit for declaration of title over the suit property left by the plaintiff Shivcharan.

10. On the basis of the aforesaid, this Court is of the considered opinion that the impugned order passed by the trial Court is just and proper and not deserve for any interference. Therefore, this revision petition deserves to be dismissed and is hereby dismissed.

C.C. as per rules.

(ANIL VERMA)
JUDGE

Trilok/-