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MP-2710-2024

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 2<sup>nd</sup> OF DECEMBER, 2024MISC. PETITION No. 2710 of 2024*RAFIQ MOHAMMAD**Versus**JUBEDA BAI AND OTHERS*

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Appearance:

*Shri Rohit Sinnarkar, counsel for the petitioner.*

*Shri Mohammad Zeeshan Khan, counsel for the respondents No.1 to*

*3.*

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ORDER

The present petition has been filed petitioner/plaintiff under Article 227 of the Constitution of India challenging the order dated 23.04.2024 passed by Third District Judge, Dhar in MCA No.24/2023, whereby the appeal filed by the respondents/defendants have been allowed and order of temporary injunction passed by the trial court dated 26.02.2023 has been set-aside.

The facts of this case are like that the petitioner/plaintiff has filed the suit for declaration and permanent injunction against the respondents/defendants. It is stated that the respondents are the residents of Kajiwada, District-Dhar (MP). The petitioner is the owner in possession of a house bearing house No.4 located at Kajiwada, Kabir Marg, Street No.2, Dhar, ad-measuring 32 feet wide and 38 feet long which was purchased by



the petitioner from his father. It is stated that the petitioner had left eight feet long portion located towards southern side of the aforesaid house which is being used by the petitioner for reaching the aforesaid house. The aforesaid portion is earmarked as BGEI in the map filed by the petitioner. It is claimed that the aforesaid portion was being used by the petitioner as a passage to reach the house. The petitioner filed application for temporary injunction under Order 39 Rule 1 and 2 CPC for restraining the respondents from raising any construction or obstruction in the right of way available to the petitioner for reaching his house.

The respondents/defendants filed their reply and has stated that in respect of the same property the suit was filed by the father of the petitioner which was dismissed by the trial court and has remained unsuccessful up-to the High Court. Therefore, the suit was barred by res-judicata. The trial court after appreciating the evidence has recorded the findings that prima-facie the case is made out in favour of the petitioner/plaintiff and later his part of the alleged sale deed has been used by the petitioner for the purpose of passage. The trial court has passed the order of temporary injunction restraining the respondents/defendants from raising any obstruction for the use of said passage. The said order has been challenged by the respondents/defendants in the appeal before the appellate court and the appellate court has reversed the said order and the appeal has been allowed.

Counsel for the petitioner/plaintiff submits that the appellate court ought to have not interfered with the order of injunction only on the ground of plea of res-judicata. The plea of res-judicata has to be considered when the



same is raised by the respondents/defendants and has been tried by the trial court as an issue. Both the parties are not in a position to state before this court whether the plea of res-judicata is one of the issues framed by the trial court.

Considering the aforesaid submissions and the findings of trial court regarding prima-facie case, the irreparable loss and balance of convenience, the appellate court ought to have not interfered only on the ground of res-judicata. Thus, the exercise of jurisdiction by the appellate court is illegal and perverse, therefore, the impugned order dated 23.04.2024 passed by the appellate court is set-aside. This court while issuing notice has already passed the interim order on 20.05.2024, directing the parties to maintain status-quo as it exists today on the subject property.

In view of the above, it is directed that parties shall maintain status-quo as directed by this court vide order dated 20.05.2024 till the suit is decided by the trial court. It is informed to the parties that the suit is at plaintiff's evidence stage. It is expected that trial court shall make all endeavours to expedite the hearing of the suit.

With the aforesaid observation, the miscellaneous petition is allowed and disposed of.

(VIJAY KUMAR SHUKLA)  
JUDGE