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MP-6043-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 25th OF MARCH, 2026MISC. PETITION No. 6043 of 2024

*DHANANJAY JADHAV S/O LATE SHRI DEVRAJ JADHAV
THROUGH ITS POWER OF ATTORNEY HOLDER CHANDRAJEE RAO
SAL*

*Versus**JITENDRA SINGH VAISHYA AND OTHERS*

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Appearance:

Shri N.K. Gupta- Senior Advocate assisted by Shri Shatru Daman
Singh Bhadouriya- Advocate for petitioner.

Shri Somnath Seth- Advocate for respondents No. 1 to 3 (plaintiffs).

Shri Faiz Ahmed Qureshi- Advocate for Municipal Corporation.

Shri Dileep Awasthi- Govt. Advocate for State.
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ORDER

This petition under Article 227 of the Constitution of India has been filed challenging the order dated 04.10.2024 (Annexure P-1) passed by the 15th Civil Judge, Senior Division, Gwalior, in RCS No. 695-A of 2021, whereby the application filed by the petitioner under Order 1 Rule 10 of the CPC was rejected.

2. A few facts giving rise to the present petition, as narrated therein, are that the original plaintiff, Smt. Saroj, wife of Shri Jitendra Singh, filed a suit for declaration and permanent injunction, claiming ownership and possession of a house located at Tanki Road, Shivaji Nagar, Aam Kho



Brigade, Lashkar, Gwalior, having a built-up area of 4,900 square feet. It was pleaded that the property was initially acquired and constructed by Kunwar Pal Singh, who obtained all necessary approvals and executed a registered Will in her favour on 20th January, 2003. After Kunwar Pal Singh's death on 25th January, 2013, the plaintiff became the sole owner and occupant of the house. All relevant documents, including construction approvals, tax receipts, and ownership records dating back to 1949, were produced by the plaintiff to establish her rightful ownership. Despite this, the defendants, including municipal officers, repeatedly challenged the plaintiff's ownership, claiming that the property belongs to the Municipal Corporation. It was pleaded in the plaint averments that they allegedly threatened to demolish the house and include it in municipal land. The plaintiff sent a registered notice on 1st July, 2021, warning the defendants not to interfere with her property, but the defendants continued their harassment. Due to these illegal attempts to claim and demolish the property, the plaintiff filed the present suit seeking declaration of ownership, permanent injunction, and protection against unauthorized interference.

3. The petitioner filed an application under Order 1 Rule 10 CPC submitting that Survey No. 1817, measuring 12 bighas and 4 biswa in Mouza Village Lashkar City, Gwalior, belonged to his late father, Sardar Devrao Jadhav, whose name is recorded in the Government revenue records as owner and occupant for the years 2007–2009. While he and his brother were abroad, certain individuals allegedly conspired with government or municipal officials to remove his father's name from the land records and



illegally occupy the land. The petitioner came to know that Mrs. Saroj Bai had filed a suit for declaration and permanent injunction regarding a part of this land. Since he is the rightful owner and the plaintiff has no interest in the disputed land, he contended that he is a necessary party to the suit as per the provisions of Order 1 Rule 10 CPC, and that a proper and effective decree cannot be passed in his absence. Therefore, he sought a direction that the plaintiffs be directed to include him as a party to protect his legal rights in the disputed land. The plaintiff filed a reply to this application. The trial court, vide the impugned order dated 04.10.2024, rejected the application. Hence, this petition.

4. It is contended on behalf of the petitioner that the original plaintiff purchased the property by way of a sale deed, in which it is mentioned that out of Survey No. 1817, land measuring 47×47 sq. ft. was purchased. The sale deed of the year 1947 is a forged document, and the document clearly mentions that it concerns land of Survey No. 1817. However, the trial court did not consider this aspect. It is further contended that the plaint averments show that the petitioner was not required to mention the fact regarding Survey No. 1817, yet the learned trial court rejected the application without considering the entire aspect of the matter. The petitioner is claiming relief regarding Survey No. 1817, which is land belonging to him; therefore, he is a necessary and proper party. Once it is mentioned that land bearing Survey No. 1817 is part of the disputed land, and such a sale deed was never executed by the petitioner, he becomes a necessary party. Once the sale deed shows that Survey No. 1817 is part of the disputed land, the petitioner is a



necessary party to the suit. The trial court did not consider this aspect while rejecting his application. The trial court wrongly applied the principle of dominus litis. In fact, dominus litis is not applicable in the present case because the petitioner prima facie stated in his application that part of the land in Survey No. 1817 belongs to him and that the sale deed is a forged document. Any land purchased by another party out of Survey No. 1817 makes the petitioner a necessary party, and he deserves to be impleaded. Hence, the petitioner prayed for setting aside the impugned order. Learned counsel for the petitioner, in support of his arguments, has placed reliance on the decision of the Coordinate Bench of this Court in *Tilak Sahkari Grah Nirman Sanstha Maryadit vs. Aqeel Ahmed and Others*, reported in 2020 (1) MPLJ 332, wherein in paragraph 19 it has been observed as under:-

Learned counsel for the petitioner has also relied upon a decision passed in the case of Savitri Devi (supra), in which the Supreme Court has observed as under:-

"9. Order I, Rule 10, Civil Procedure Code enables the Court to add any person as a party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of a multiplicity of proceedings is also one of the objects of the said provision in the Code. 10. In *Khemchand Shankar Choudhari vs. Vishnu Hari Patil*, (1983) 1 SCC 18, this Court held that a transferee pendente lite of an interest in an immovable property which is the subject-matter of a suit is a representative in the interest of the party from whom he has acquired that interest and has a right to be impleaded as a party to the proceedings. The Court has taken note of the provisions of section 52 of the Transfer of Property Act, 1882 as well as the provisions of Rule 10 of Order XXII, Civil Procedure Code. The Court said: (SCC p. 21, para 6)

"It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard."

11. In *Ramesh Hirachand Kundanmal vs. Municipal Corpn.*



of Greater Bombay, (1992) 2 SCC 524, this Court discussed the matter at length and held that though the plaintiff is a "dominus litis" and not bound to sue every possible adverse claimant in the same suit, the Court may at any stage of the suit direct addition of parties and generally it is a matter of judicial discretion which is to be exercised in view of the facts and circumstances of a particular case. The Court said; (SCC p.529, para 8)

"8. The case really turns on the true construction of the rule in particular the meaning of the words 'whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit'.

The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions."

The Court also observed that though prevention of actions cannot be said to be the main object of the Rule, it is a desirable consequence of the Rule. The test for impleading parties prescribed in *Razia Begum vs. Sahebzadi Anwar Begum*, (AIR 1958 SC 886) that the person concerned must be having a direct interest in the action was reiterated by the Bench."

As per the view taken by the Supreme Court, it is clear that despite the fact that the "dominus litis" lies with the plaintiff, the Court is not bound to follow the said principle, but can exercise its discretion at any stage of the suit directing addition of parties, if the Court finds that without impleading the said party in the suit, the Court would not be in a position to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code.

5. Further, learned counsel for the petitioner has placed reliance on the decision of the Coordinate Bench of this Court in *Nirmala Dharsingh Baghela vs. Ranjit Singh Amarsingh Dhuman and Others*, reported in 2000 (3) MPLJ 218, wherein in paragraphs 11, 14, and 15 it has been observed as under:

11. Therefore, though the plaintiff is dominus litis but the Court has the power on consideration of the facts and circumstances of



each case, as to whether prayer regarding impleadment deserves to be allowed under Order 1, Rule 10(2), Civil Procedure Code. Of course, such a discretion has to be exercised judicially, as laid down in *Kamta Prasad vs. Vidyawati*, 1995 MPLJ 127. It has been held therein that, if a person is vitally interested in the litigation and if the decree which may ultimately be passed in the said litigation is vitally to affect his right, he may apply to be added as a party under Order 1, Rule 10(2), Civil Procedure Code.

14. From para 13 of the plaint (Annexure A-1) it would appear that the holders of the suit land and that they have also prayed that their names be thereof. The respondents Nos. 6 to 9 in their application (Annexure A-5) have recorded by respondents Nos. 4 and 5 in Municipal records, as owners his wife Prem Ben Tank, while respondents Nos. 6 to 9 are the daughters of stated that the plaintiffs are the children of Late Jairam Bhiji Bhai Tank from have also inherited the suit property and have the same interest therein as that Gomti Ben Tank, another wife of Jairam Bhijji Bhai Tank. Therefore, they of plaintiffs.

15. Obviously, if the averments of respondents Nos. 6 to 9 as above are established and accepted then they also would have equal share along with the plaintiffs/petitioners in the suit property left by their father Jairam Bhijji Bhai Tank, and consequently the exclusive right and claim over the suit property as asserted by the plaintiffs, would stand negated. Therefore, for completely and effectually deciding the controversy in the suit and before the relief claimed by the plaintiffs/petitioners could possibly be granted to them. it was necessary that the respondents Nos. 6 to 9 be also permitted to raise their contentions and heard in support thereof. Therefore, the presence of effectually adjudicate upon and to settle the questions involved in the suit. In respondents Nos. 6 to 9 appears to be necessary in order to completely and view of above, the prayer of respondents Nos. 6 to 9 for their impleadment was rightly allowed by the impugned order.

6. On the other hand, learned counsel for respondents No. 1 to 3/plaintiffs, supporting the impugned order, submitted that the plaintiff is dominus litis and has discretion as to whom he or she wants to implead as a party. The petitioner was unable to show the current position of the revenue records in which he was mentioned as the owner of the land in dispute. In support, learned counsel relied on the decision of the Hon'ble Apex Court in *Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and Others*, reported in (2010) 7 SCC 417 ,



wherein in paragraphs 13 and 15 it has been held as under:

13. To the same effect is the decision of this Court in *Umesh Challiyill v. K.P. Rajendrans*, where the Court held that even if the respondent raised an objection in his counter-affidavit and the appellant had despite the opportunity to cure the defect pointed out by the respondent did not do so, yet an election petition cannot be dismissed on the ground that the petitioner had not cured any such defects. The petitioner was entitled to bona fide believe that the petition is in all respects complete and if the High Court found it otherwise it would give an opportunity to him to amend or cure the defect. This Court also held that while dealing with election petitions the court should not adopt a technical approach only to dismiss the election petitions on the threshold.

15. The question whether a defect in the verification of the pleading is fatal is also no longer *res integra* in the light of the decisions in *F.A. Sapa v. Singora 10* and *Sardar Harcharan Singh Brar* case where this Court held that defective verification or affidavit is curable. What consequences, if any, may flow from an allegedly defective affidavit, is required to be judged at the trial of an election petition but such election petition cannot be dismissed under Section 86(1) of the Act for any such defect.

7. Further, learned counsel relied on *Kanaklata Das and Others vs. Naba Kumar Das and Others*, reported in (2018) 2 SCC 352, wherein in para 18 it has been held as under:

18. We, however, make it clear that any finding whether directly or indirectly, if recorded by the trial court touching the question of title over the suit property, would not be binding on Respondent 1 regardless of the outcome of the suit and Respondent 1 would be free to file an independent civil suit against the appellants for a declaration of his right, title and interest in the suit premises and in any other properties, if so, and claim partition and claim petition and separate possession of his share by metes and bounds in all such properties.

8. Heard learned counsel for the parties. Perused the impugned order and the documents available on record.

9. In the present case, the petitioner, in his application, submitted that he is a necessary party because he is claiming ownership of Survey No. 1817, measuring 12 bighas and 4 biswa in Village Lashkar, Gwalior,



whereas the plaintiffs are claiming an area of 4,900 sq. ft. in a part of the land bearing Survey No. 1817. Upon perusal of the record, it is evident that the plaintiffs filed the civil suit seeking declaration and permanent injunction and specifically mentioned in the plaint that the disputed property is situated in a part of land bearing Survey No. 1817. The original plaintiff also pleaded that his father was the owner of the entire land bearing Survey No. 1817. Therefore, the petitioner appears to be a necessary party, even if the principle of dominus litis is considered. The judgments relied upon by the plaintiffs are of no assistance in the present facts and circumstances. The trial court, therefore, committed an error in rejecting the application moved on behalf of the petitioner.

10. Accordingly, the impugned order deserves to be, and is hereby, **set aside**. The application moved on behalf of the petitioner under Order 1 Rule 10 CPC for impleadment as a party in the suit is allowed. The trial court is directed that, after impleadment of the petitioner as a party to the suit, it shall proceed with the matter in accordance with law.

11. With the aforesaid, the petition stands **disposed of**. No order as to costs.

(HIRDESH)
JUDGE

MKB