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MP-1275-2024

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 5<sup>th</sup> OF NOVEMBER, 2024MISC. PETITION No. 1275 of 2024*AAKASH THAKUR AND OTHERS**Versus**KISHORSINGH THAKUR AND OTHERS*

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Appearance:

Shri Ramesh Sonvane - Advocate for the petitioners.

Shri Akshat Pahadia - Advocate for the respondents.

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ORDER

The present petition is filed under Article 227 of the Constitution of India by the petitioners/original plaintiffs challenging the order dated 3/2/2024 whereby the application filed by them under Order I Rule 10 of CPC for impleadment of transferee *pendete lite* before the first Appellate Court has been rejected.

2. Facts secondly are that the petitioners have filed suit for declaration and injunction against the respondents on 28/8/2021. On 28/6/2023 the respondents No.1 has executed the sale deeds of part of the suit land, in favour of the proposed transferee. On 25/8/2023, the suit filed by the petitioner was dismissed on merit. The petitioners filed appeal under Section 96 of CPC. In the appeal on 12/12/2023, the petitioners filed application under Order I Rule 10 of CPC for



impleadment of transferee *pendente lite* by the impugned order the said application has been rejected.

3. Counsel for the petitioner submitted that the Appellate Court has erred in dismissing the application without considering the fact that the proposed transferee *pendente lite* may not be necessary party but in order to avoid multiplicity of litigation they ought to have been allowed to be impleaded party.

4. Per contra, counsel for the respondent vehemently argued that the order passed by the appellate Court rejecting the application is legal valid and there is no perversity and, therefore, no interference is called for under Article 227 of the Constitution of India. He heavily relied on the provisions of sub Rule 2 of Rule 10 of Order I of CPC to submit that the petitioners have failed to make out a case that in the absence of the transferee *pendente lite* the decree was not effective. Further the petitioners were well aware of the said transfer and they had also cross-examined the witness and thereafter the suit was dismissed.

5. Before appreciating the aforesaid contentions, it is apposite to refer the relevant facts in short that the petitioners filed application under Order I Rule 10 CPC pleading that during the pendency of trial before the trial Court, the 11 plots out of the disputed plots were sold by the respondent No.1 to two persons namely Smt. Nirmala Joshi and Smt. Rekha Joshi, without permission of the Trial Court. Out of the aforesaid eleven plots, six plots were sold to Smt. Nirmala Joshi and five plots



were sold to Smt. Rekha Joshi on 28/6/2023. The aforesaid plots are also in possession of the appellants. The aforesaid purchasers may also file legal proceeding to take possession of the plots from the appellants, resulting into multiplicity of the proceedings. It has been further pleaded that the aforesaid purchasers being the necessary and interested parties are necessary to array as respondents, in the instant appeal. In the aforesaid background in order to appreciate the rival contentions, it is apt to quote the relevant provisions of Order I Rule 10 of CPC.

**10. Suit in name of wrong plaintiff. - (1)**

Where a suit has been instituted the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties. The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or 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, be



added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

6. From sub-Rule 2 of Rule 10 of CPC, it is pellucid that Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or 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, be added.

7. Upon perusal of the pleadings and the impugned order it is evident that the suit for declaration and injunction was filed against the respondents on 28/8/2021. The alleged sale deed was executed by respondent No.1 on 28/6/2023. The witnesses were examined by the respondent No.1 and they were put to cross-examination by the petitioners in respect of the sale deed as well. Thus, it is evident that the petitioners had knowledge of the execution of the sale deed before passing of the decree itself. They did not file any application for impleading them as party before the Trial Court. After the decree on 25/8/2023, they filed appeal under Section 96 of CPC.

8. Counsel for the petitioner places reliance on the judgment



passed in the case of *Savitri Devi vs. District Judge, Gorakhpur* reported in *AIR 1999 Supreme Court 976*. However, the said judgment would not render any assistance to the facts of the present case. In the said case, despite interim injunction granted by the Court restraining from alienating the property was sold by one of the defendants. In that context the Apex Court held that impleadment is necessary for deciding questions whether sales deeds were executed in contempt and disregard of injunction and whether purchasers were bonafide transferees. The petitioner has further relied on the judgment passed in the case of *Notified Area Committee Buria vs. Gobind Ram Lachhman Dass* reported in *AIR 1959 Punjab 277*. In the said case it was held that the Appellate Court is also possessed of the power to allow the application for joinder of necessary parties. This law is no longer res integra that the power under Order I Rule 10 of CPC can be exercised by the Appellate Court as well. However, in the case of *Notified Area Committee Buria* (supra) it was held that a party which could not be impleaded in the original proceedings on account of bonafide mistakes can be added as party. That was not a case where the transferee *pendente lite* was allowed to be impleaded only on the ground to avoid multiplicities of litigation. Thus, the said judgment would also not render any help to the submission of counsel for the petitioner. In the case of *Anil Kumar Singh vs. Shivnath Mishra and Gadgasa Guru* reported in *(1995) SCC 3 147*, the Apex Court held that while considering an application under



Order I Rule 10 of the CPC, the condition precedent is that the Court must be satisfied that the presence of the party to be added, would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit (para 7 of the said judgment may be referred). The sub-Rule 2 of Rule 10 of Order I says that the "necessary parties are persons who ought to have been joined as party to the suit, a necessity to the Constitution of the proper suit without whom no relief or order can be passed". In order that a person may be considered a necessary party, defendant to the suit, the conditions precedent must be:-

(A) that there must be a right to some relief against him in respect of the dispute involved in the suit;

(B) that his presence should be necessary to enable the Court to effectually and completely to adjudicate upon and settle all the questions involved in the the suit.

9. The similar view has been taken by co-ordinate Bench in the case of *Gagan Preet Singh Dang vs. Namita Sarkar and Others* reported in *(2018) 1 MPLJ 220* wherein it has been held that a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If necessary party is not impleaded, suit itself is liable to be dismissed. In the present case, the suit was filed for declaration and injunction against the respondents. The petitioners were having knowledge of the execution of the sale deed



by respondent No.1 during the pendency of the suit. But they were not impleaded party. The witnesses of the defendants were put to cross-examination in this regard. The suit has been dismissed not on the ground of non joinder of the necessary party. There was no challenge to the sale deed executed in favour of the transferee *pendente lite*.

10. The impugned order entails civil consequences and, therefore, the same could not have been passed without giving any show-cause notice or opportunity of hearing and without following principles of natural justice. In this regard a reference may be made to the order passed by the Apex Court in the case of *State of Orissa vs. Dr.(Ms.) BinaPani Dei* reported in *AIR 1967 SC 1269* and followed in *Maneka Gandhi vs. Union of India* reported in *(1978) 1 SCC 248*, *Delhi Transport Corporation Vs. DTC Mazdoor Congress and Ors.* reported in *(1991) Supp. 1 SCC 600*, *Kartar Singh vs. State of Punjab* reported in *(1994) 3 SCC 569*, *Sahara India vs. Commissioner of Income tax central and Anr.* reported in *(2008) 14 SCC 151*, *Surendra Mohan Arora vs. HDFC Bank Ltd.* reported in *(2014) 15 SCC 294* and *Shrawan Kumar Jha and Ors. Vs. State of Bihar and Ors.* reported in *AIR 1991 SC 309*. In the light of the aforesaid facts, discussion and law laid down by the Apex Court and this Court, this Court does not find any illegality or perversity in the impugned order warranting any interference under Article 227 of the Constitution of India.

11. Even otherwise, it is settled law that jurisdiction under Article



227 of the Constitution of India cannot be exercised to correct all errors of subordinate Courts within its limitation. It can be exercised where the order is passed in grave dereliction of duty and flagrant abuse of the fundamental principle of law and justice. [*See. Jai Singh and another vs. MCD, (2010) 9 SCC 385 and Shalini Shetty vs. Rajendra S. Patil, (2010) 8 SCC 329*].

12. Further, a Co-ordinate Bench of this Court in the case of *Ashutosh Dubey and another vs. Tilak Grih Nirman Sahakari Samiti Maryadit, Bhopal and another, 2004 (2) MPHT 14* held that supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise jurisdiction which it does have or the jurisdiction through available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied - (i) the error is manifest and apparent on the fact of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law; and (ii) a grave injustice or gross failure of justice has occasioned thereby.

13. In view of the aforesaid enunciation of law, the instant petition





is devoid of merit and is hereby dismissed. The order impugned in the present writ petition passed by the Court below is upheld.

(VIJAY KUMAR SHUKLA)  
JUDGE

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