

HIGH COURT OF MADHYA PRADESHBENCH AT GWALIORJUSTICE SUJOY PAUL.**Writ Petition No. 559/2012**

Balkishan and another

Vs.

Nanne Khan and others

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Shri Sanjay sharma, Advocate for the petitioner.  
Shri Rajmani Bansal, Advocate for the respondent.  
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**ORDER****( 28 / 08 /2015 )**

This petition filed under Article 227 of the Constitution challenges the order dated 16.12.2011, whereby application of the plaintiff/respondents preferred under Order 1 Rule 10 CPC is allowed by the court below.

2. Shri Sanjay Sharma, learned counsel for the petitioner submits that the said application is erroneously allowed by the court below. He relied on the stand taken in the reply (Annexure P/6). In nutshell, it is argued that the application under Order 1 Rule 10 CPC can be filed till framing of the issues. Thereafter, such application is not entertainable. The plaintiff was aware of the sale deed of 1984. At this belated stage, the said application could not have been entertained.

3. Prayer is opposed by Shri Rajmani Bansal. He submits that the said application can be filed at any stage of the proceedings. He supported the order impugned.

4. I have heard learned counsel for the parties and perused the record.

5. Before dealing with the rival contentions of the parties, it is apt to quote Order 1 Rule 10(3) C.P.C. It reads as under :-

“ (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 of his consent.”

6. If the application Annexure P/5 is tested on the anvil of the requirement of enabling provision, it will be clear that said application was not entertainable. By way of said application, it was prayed that Salma, Suraiya and Nargis, daughters of Turab Khan, be permitted to be impleaded as plaintiff No.2, 3 & 4. This application is not signed by said three persons, who were sought to be impleaded as a plaintiff. It is a matter of common knowledge that filing of plaint is a voluntary and unilateral action / decision needs to be taken by the party desirous to file the suit. Thus, minimum requirement was to establish that said party has given consent to be impleaded as plaintiff in the matter. The said application Annexure P/5 is filed by the counsel. No authorization, verification or affidavit is filed in support of said application. For this reason, which may be different than the reason mentioned in the impugned order, I am not inclined to entertain this petition.

7. In *AIR 1956 Rajasthan 45 (Chotteylal Vs. Hari Kishen)* the Rajasthan High Court opined that so far the wordings of Order 1 Rule 10 go, there is nothing therein that a defendant can be transported as plaintiff or vice versa with his consent only. The only provision of R.10 which requires consent is sub-r.(3) which says that no person shall be added as plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

8. As noticed above, no consent of proposed plaintiff is shown before the court below. Hence the said application itself was not maintainable. The Court below has not committed any error in rejecting the same.

9. Petition fails and is hereby dismissed.

**(Sujoy Paul)**  
**Judge**