

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT GWALIOR**  
**SINGLE BENCH:**  
**HON. SHRI JUSTICE ANAND PATHAK**  
**WRIT PETITION NO. 843 OF 2012**  
**Kamal Singh & Ors.**  
**Versus**  
**Bhav singh Rajpoot & Ors.**

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Shri D.D.Bansal, learned counsel for the petitioners.

Shri Sanjay Sharma, learned counsel for respondent No. 1.

Shri Ajay Bhargava, learned GA for the respondent No. 3/State.

None for respondent No. 2 though served.

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**Whether approved for reporting : Yes**

**Law laid down:-**

Fresh pleadings and evidence which are in variation to the original pleadings cannot be taken unless the fresh pleadings are incorporated by way of amendment in the pleadings. Unless the plaint is amended and a specific plea is taken, the said pleadings cannot be considered at the time of evidence.

**ORDER**  
**(15/03/2018)**

The present petition under Article 227 of the Constitution of India has been preferred by the petitioners/defendants against the order dated 19/1/2012 passed by trial Court; whereby, the application preferred by the petitioners as defendants under Section 151 CPC (Annexure P/7) has been rejected.

2. Precisely stated facts of the case are that respondents No. 1 and 2/plaintiffs instituted a suit for specific performance of an agreement to sale dated 13/3/2009 against the petitioners / defendants No. 1 to 4 on the allegations that petitioners have executed an agreement to sale in favour of plaintiffs with respect to agricultural land owned by defendants for a consideration of Rs. 1,62,00,000/- and plaintiffs have made payment of advance amount of Rs. 24 lacs in cash and through cheques. The plaintiffs extended their readiness and willingness to get the sale deed executed after performing their part of contract but

defendants are not performing their part of contract and have entered into fresh contract with other persons.

3. The present petitioners appeared in the suit as defendants and filed written statement and rebutted the claims made by the plaintiffs.

4. It appears that during the pendency of the suit, an application under Order I Rule 10 (2) read with Section 151 of CPC was preferred by plaintiff No. 1 Bhav Singh Rajpoot to delete the name of plaintiff No. 2-Dr. Manoj Singh Somvanshi from the array of plaintiffs because the plaintiff No. 2 executed a relinquishment deed dated 6/5/2010 in favour of plaintiff No. 1. Said aspect was considered by the trial Court and vide order dated 19/4/2011 (Annexure P/6) rejected the contentions of the plaintiff No. 1 and application so preferred. Resultantly, the plaintiff No. 2 remained in the fray as plaintiff No. 2.

5. When the matter placed for evidence then affidavit under Order XVIII Rule 4 CPC was preferred by plaintiff no. 1 in which the factum of relinquishment deed has again been preferred and it has been referred in para 11 of the affidavit that plaintiff No. 2 has executed a relinquishment deed in favour of plaintiff No. 1 and other related pleadings. The said pleadings appeared to be objectionable to the petitioners as according to them, once the controversy has been decided by trial Court by passing order dated 19/4/2011 (Annexure P/6), at an earlier point of them, then the said pleadings could not have been incorporated in the affidavit.

6. According to learned counsel for the petitioners, the trial Court while passing impugned order did not consider the controversy on merits and rejected the application on the basis of want of jurisdiction. According to trial Court, such deletion is not within the right and authority of the trial Court. Same according to learned counsel for the petitioners is an illegality looking to the judgments rendered by Bombay High Court in the matter of **Mrs. Mahabanoo Navroz Kotwal Vs. Filoo Fali Bomanji and Anr., AIR 2015 (NOC) 766 (BOM)**.

7. On the other hand, learned counsel for the respondents opposed the prayer made by the petitioners and submits that trial Court rightly passed the impugned order because trial Court had no authority to pass such order.

8. Heard.

9. The question for consideration before this Court in the case in

hand is whether a party which does not make any pleadings in plaint or written statement (as the case may be) can incorporate such pleadings in affidavit under Order XVIII Rule 4 CPC and whether it can liable to be included as part of evidence or is liable to be ignored ?

**10.** The Hon'ble Apex Court in the case of **Nandkishore Lalbhai Mehta Vs. New Era Fabrics Private Limited and Ors., (2015) 9 SCC 755** has dealt with in somewhat similar fact situation and held that fresh pleadings and evidence which are in variation to the original pleadings cannot be taken unless the fresh pleadings are incorporated by way of amendment in the pleadings. Unless the plaint is amended and a specific plea is taken, the said pleadings cannot be considered at the time of evidence. Hon'ble Apex Court in para 20 has held thus:-

“9) The learned senior counsel further submitted that unless and until there is an amendment of the pleadings, no evidence with regard to the facts not pleaded can be looked into, for which he relied upon a decision of this Court in **Bachhaj Nahar vs. Nilima Mandal & Anr. (2008) 17 SCC 491** wherein it was held as under:-

“7. Feeling aggrieved, the plaintiffs filed a second appeal before the High Court. The High Court by judgment dated 14-5-2004 allowed the second appeal. The High Court held that the plaintiffs had failed to make out title to the suit property. It however held that the plaintiffs had made out a case for grant of relief based on easementary right of passage, in respect of the suit property, as they had claimed in the plaint that they and their vendor had been using the suit property and the first defendant and DW 6 had admitted such user. The High Court was of the view that the case based on an easementary right could be considered even in the absence of any pleading or issue relating to an an elementary right, as the evidence available was sufficient to make out easementary right over the suit property. The High Court therefore granted a permanent injunction restraining the first defendant from interfering with the plaintiffs' use and enjoyment of the “right of passage” over the suit property (as also of the persons living on the northern side of the suit property).

10. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:

- (i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject-matter of an issue, cannot be decided by the court.
- (ii) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in

pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

(iii) A factual issue cannot be raised or considered for the first time in a second appeal.

11. The Civil Procedure Code is an elaborate codification of the principles of natural justice to be applied to civil litigation. The provisions are so elaborate that many a time, fulfilment of the procedural requirements of the Code may itself contribute to delay. But any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundamental rules of civil procedure. Be that as it may. We will briefly set out the reasons for the aforesaid conclusions.

12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

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(emphasis supplied)”

11. Similarly, this aspect has been considered by a coordinate Bench of this Court while passing **order dated 28/8/2017 in W.P.No. 4661/2017 (Manoj Agrawal Vs. Smt. Geeta Singhal )** as well as Bombay High Court in the matter of **Mrs. Mahabanoo Navroz Kotwal (supra)**.

12. In view of above, it is clear that trial Court would very well be within its authority if suitable direction would have been given by the trial Court for ignoring the pleadings or deletion of pleadings which are not the part of earlier pleadings.

13. Plaintiff cannot introduce new facts or documents by attaching the documents alongwith affidavit of evidence, since the stage of filing documents and making pleadings were over long back.

14. Therefore, in the fact situation of the case, once the trial Court vide order dated 19/4/2011 has already rejected the application of the plaintiff No. 1 and rejected the contention of plaintiff in respect of relinquishment deed executed by plaintiff No. 2, then such pleadings cannot be resurfaced in the affidavit filed by the plaintiff No. 1 under Order XVIII Rule 4 CPC. It needs to be deleted, therefore, petition preferred by the petitioners is allowed.

15. Plaintiff No. 1 is directed to delete the pleadings in the affidavit under Order XVIII Rule 4 CPC in para 11 and if required may prefer fresh affidavit while deleting para 11 of affidavit.

16. Parties are directed to appear before the trial Court on 10/4/2018 and take further guidance from the trial Court. Looking to the long pendency of the suit, it is expected from the parties that they will cooperate in the trial and would not seek any undue adjournment without any justifiable basis. Trial Court is directed to expedite the suit proceedings with a expectation that suit would be decided within one year from the date of appearance of the parties.

17. Petition stands allowed and disposed of accordingly.

**(Anand Pathak)**  
**Judge**

jps/-