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THE HIGH COURT OF MADHYA PRADESH
MP No.644/2018
(Anek Singh Tomar vs. Dhaniram S/o Shri Bhagchand
(dead) through LRs.

Gwalior, Dated : 15.11.2018

Shri D.D. Bansal, Counsel for the petitioner.

Shri K.S. Tomar, Counsel for the respondents.

This petition under Article 227 of the Constitution of India has been filed challenging the order dated 17.1.2018 passed by Civil Judge Class-II, Pohri, District Shivpuri in Civil Suit No.18A/2013 by which the application filed by the petitioner under Order 16 Rule 1 of CPC has been rejected.

Although initially this petition was also filed challenging another part of order dated 17.1.2018 rejecting the application under Order 8 Rule 1(3) of CPC, however at the time of admission, the counsel for the petitioner did not press the said part of the impugned order and, accordingly, this petition is being considered only with regard to the order rejecting the application filed under Order 16 Rule 1 of CPC.

The necessary facts for the disposal of the present petition in short are that the original plaintiff Dhaniram who is being represented by respondent No.1 (a to e) has instituted a civil suit for declaration of title and permanent injunction and for declaring the order dated 31.10.1990 as null and void and also for declaring the registered sale deed dated 17.8.1982 as null and void.

It appears that the petitioner filed an application under Order 16 Rule 1 of CPC, seeking issuance of summons by the Court for summoning one Murarilal

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Verma, retired Patwari, as his witness. The said application has been rejected by the Trial Court by holding that the petitioner has not clarified in his application as to how the said witness is relevant.

Challenging the order dated 17.1.2018 passed by the Trial Court, it is submitted by the counsel for the petitioner that it is not essential to disclose the importance of the witness in the application filed under Order 16 Rule 1 of CPC and the party may explain the importance to the Court also and, therefore, the Trial Court should not have rejected the application. It is further submitted that even otherwise, the Trial Court should have granted a liberty to the petitioner to clarify the importance of the witness Murarilal Verma and, therefore, the impugned order suffers from jurisdictional error. It is further submitted that the plaintiff has sought declaration to the effect that the order dated 31.10.1990 is null and void and since Murarilal Verma had appeared as a witness in the said proceeding, therefore, he is relevant and important witness.

To buttress his contention, the counsel for the petitioner has relied upon the judgment passed by this Court in the case of **Ajendra Kumar vs. Laxminarayan** reported in **1989 (2) MPWN 125 SN**.

Per contra, the petition is opposed by the counsel for the respondents by submitting that it is incumbent upon the concerning party to clarify in the application

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itself as to why a particular person is an important and relevant witness in the proceeding, which has not been done and even otherwise Murarilal Verma cannot be said to be a relevant and important witness merely because he had appeared as a witness in a proceeding which has been challenged in the civil suit.

Considered the submissions made by the counsel for the parties.

The moot question for consideration is that whether the petitioner was under obligation to disclose the importance and relevance of Murarilal Verma as a witness in the application or not.

The question involved in the present petition is no more *res integra*.

The Supreme Court in the case of **Kokkanda B. Poondacha and others vs. K.D. Ganapathi & another** reported in **(2011) 12 SCC 600** has held as under:-

"18. We may add that if the parties to the litigation are allowed to file the list of witnesses without indicating the purpose for summoning the particular person(s) as witness(es), the unscrupulous litigants may create a situation where the cases may be prolonged for years together. Such litigants may include the name of the advocate representing the other side as a witness and if the court casually accepts the list of witnesses, the other side will be deprived of the services of the advocate. Therefore, it would be a

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prudent exercise of discretion by the court to insist that the party filing the list of witnesses should briefly indicate the purpose of summoning the particular person as a witness."

Thus, it is clear that the litigants must indicate briefly the purpose of summoning the particular person as a witness in the application itself. Furthermore, merely because Murarilal Verma had appeared as a witness in a proceeding which is under challenge in the civil suit by itself would not be sufficient to hold that Murarilal Verma is relevant and important witness.

Considering the submissions made by the counsel for the petitioner this Court is of the view that the Trial Court did not commit any jurisdictional error by rejecting the application filed under Order 16 Rule 1 of CPC.

Accordingly, this petition fails and is hereby **dismissed**. The interim order dated 5.2.2018 is also hereby vacated.

Let a copy of this order be sent to the Trial Court for necessary information and compliance.

Certified copy as per rules.

(alok)

(G.S. Ahluwalia)
Judge