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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA
ON THE 28th OF JULY, 2022
CIVIL REVISION No. 146 of 2021**

Between:-

**MAHESH MANGAL S/O LATE RAGHUVAR
DAYAL MANGAL, AGE 64 YEARS, CASTE
AGRAWAL VAISHY, RESIDENT OF SHIKARWARI
BAZAAR MORENA, TEHSIL AND DISTRICT
MORENA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI B.S. DHAKAD- ADVOCATE)

AND

- 1. SHRIBHAGWAN MANGAL S/O LATE RAGHUVAR
DAYAL MANGAL, AGE 58 YEARS, CASTE
VAISHY, RESIDENT OF BANKHANDI ROAD
MORENA, TEHSIL AND DISTRICT MORENA
(MADHYA PRADESH)**
- 2. GOPALDAS GARG S/O SHRI TOTARAM GARG,
AGE 65 YEARS, CASTE VAISHY RESIDENT OF
K.S. KOTHI, NEAR MELA GROUND, MORENA,
TAHISL AND DISTRICT MORENA (MADHYA
PRADESH)**
- 3. RAJENDRA KUMAR S/O LATE SHRI RAGHUVAR
DAYAL MANGAL, AGE 61 YEARS, CASTE
VAISHY, RESIDENT OF IN FRONT OF DROPADI
SCHOOL JIWAJIGANJ, MORENA TEHSIL AND
DISTRICT MORENA (MADHYA PRADESH)**
- 4. SMT. SONADEVI W/O LATE SHRI RAGHUVAR
DAYAL MANGAL, AGE 90 YEARS, RESIDENT OF
SHIKARWARI BAZAR, MORENA, TEHSIL AND
DISTRICT MORENA (MADHYA PRADESH)**
- 5. SMT. MIRADEVI W/O SHRI MAHESH CHANDRA
MANGAL, AGE 56 YEARS, RESIDENT OF
SHIKARWARI BAZAR, MORENA, TEHSIL AND
DISTRICT MORENA (MADHYA PRADESH)**
- 6. SMT. SHEELADEVI W/O SHRI RAMESH**

**CHANDRA GARG, AGE 58 YEARS, RESIDENT OF
K.S. OFFICE JIWAJIGANJ, MORENA, TEHSIL
AND DISTRICT MORENA (MADHYA PRADESH)**

7. **SMT. SUDHARANI W/O SHRI MOHANLAL GARG,
AGE 65 YEARS, RESIDENT OF K.S. KOTHI, NEAR
MELA GROUND, MORENA (MADHYA PRADESH)**
8. **MOHANLAL GARG S/O LATE SHRI TOTARAM
GARG, AGE 70 YEARS, RESIDENT OF K.S.
KOTHI, NEAR MELA GROUND, MORENA
(MADHYA PRADESH)**
9. **GOVIND PRASAD GARG S/O LATE SHRI
TOTARAM GARG, AGE 68 YEARS, RESIDENT OF
K.S. KOTHI, NEAR MELA GROUND, MORENA
(MADHYA PRADESH)**
10. **RAMESH CHANDRA GARG S/O LATE SHRI
TOTARAM GARG, AGE 62 YEARS, RESIDENT OF
K.S. OFFICE JIWAJIGANJ, MORENA TEHSIL
AND DISTRICT MORENA (MADHYA PRADESH)**
11. **SUB REGISTRAR, SUB REGISTRAR OFFICE
MORENA (MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI SURESH AGRAWAL- ADVOCATE FOR RESPONDENT
NO.1)**

.....
*This revision coming on for hearing this day, the court passed the
following:*

ORDER

The present civil revision under Section 115 of Code of Civil Procedure has been preferred by petitioner- defendant No.1 challenging the order dated 25.03.2021 passed by Fourth Civil Judge, Class-II, Morena in RCSA.32 of 2021; whereby, the application filed by petitioner along with co-defendant Nos.4 and 5 under Order 7 Rule 11 read with Section 151 of CPC has been rejected.

Facts giving rise to present revision, in short, are that respondent No.1- plaintiff filed a suit for permanent injunction pleading therein that a power of

attorney dated 19.12.1998 was executed jointly in favour of petitioner and defendant No.2 be declared null and void. It is pleaded that the respondent No.2 be directed not to sell the share of his property. Although the power of attorney was jointly executed by respondent No.1 & 3 to 10 and three other persons in favour of the petitioner and respondent No.2 which was signed by all of them in the office of Sub Registrar, Morena but after service of notice, the petitioner and respondents No.4 and 5 appeared and filed a joint application under Order 7 Rule 11 of the CPC for rejection of plaint on the ground of non - joinder of necessary party and the suit is barred by law. The trial Court vide order dated 23.03.2021 dismissed the said application by observing that the objection raised by the petitioner is a mixed question of law and fact. Hence, this revision.

It is submitted by learned counsel for the petitioner that knowledge of execution of power of attorney is an admitted fact which reflects from documents Annexures P-4 and P-5, i.e. power of attorney and partition deed. He has submitted his submission with regard to partition deed executed earlier. It is further submitted that the plaintiff was having knowledge of execution of power of attorney in the year 2002 and it is also admitted by the plaintiff, therefore, there is no need of further evidence. Therefore it submitted that the trial Court has wrongly rejected the application filed under Order 7 Rule 11 of CPC. In support of contention, he has placed reliance on the judgments passed by the Supreme Court as well as by the High Court in cases of **Soumitra Kumar Sen vs. Shyamal Kumar Sen and Others:[(2018) 5 SCC 644]** and **Shrihari Hanumandas Totala vs. Hemant Vithal Kamat and Others: [(2021) 9 SCC 99]**; **Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and Another:[2009(4) M.P.L.J. (SC) 315]**; **Nanhibai vs.**

Govindrao:[2007(1) MPLJ 115], Anita Jain vs. Dilip Kumar and Another:[2018(1) MPLJ 555] and Ahmedsaheb (dead) by L.Rs. and Others vs. Sayad Ismial:[2012(4) MPLJ 571]. Hence, the impugned order deserves to be set aside by allowing this revision.

On the other hand, learned counsel for the respondent while opposing the contentions made by the learned counsel for the petitioner submitted that in the present case, an objection was raised on behalf of respondent No.1 that no power of attorney has been executed between the parties and the same is fabricated one, therefore, at this stage, no conclusion can be drawn in this regard. Therefore, the trial Court has rightly rejected the application filed under Order 7 Rule 11 of CPC by observing that there is a mixed question of law and fact. Hence, prayed for dismissal of this revision.

Heard the learned counsel for the parties and perused the documents available on record.

Order 7 Rule 11 of CPC runs as under:-

"11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law; "

(7) Section 11 of CPC runs as under:-

11. Res judicata. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and

substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.-- The expression former suit shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.-- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.--The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.-- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

[Explanation VII.-- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree."

It is well-settled principle of law that while considering the application under Order 7, Rule 11 of CPC, only the averments made in the plaint alone are to be looked into. In the order impugned, the Court below has also observed that there is a mixed question of law and fact, which cannot be decided without

recording of evidence of both the parties. Furthermore, the plaintiff filed the suit by pleading that the power of attorney along with documents are forged. The scope of scrutiny at the stage of consideration of application under Order 7 Rule 11 of CPC is confined only to the averments made in the plaint which could not be decided by this Court.

In view of the above, this Court is of the considered opinion that the Court below has not committed any legal infirmity or perversity while passing the impugned order. Accordingly, the civil revision filed by the petitioner is hereby **dismissed** being devoid of merits.

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(RAJEEV KUMAR SHRIVASTAVA)
JUDGE