

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

:SINGLE BENCH
{JUSTICE ANAND PATHAK,J}

MISC. PETITION No. 1363 of 2021

(ASHWANI SHARMA
Vs
RAVINDRA KUMAR SHARMA AND OTHERS)

Shri Somnath Seth – Advocate for the petitioner.
Shri Vishal Tripathi – Govt. Advocate for respondent No.9/State.
None for respondent No.2, though served.

ORDER

(Delivered on 5th day of July, 2024)

1. The present petition is preferred under Article 227 of the Constitution at the instance of defendant No.1 being crestfallen by order dated 24.06.2020 passed by IInd Civil Judge, Senior Division Mehgaon, District Bhind, whereby application preferred by plaintiffs (respondents No. 1 and 2 herein) under Order VI Rule 17 CPC is allowed and plaintiffs are permitted to cause amendment in the plaint.

2. Precisely stated facts of the case are that plaintiff No.2 Meera @ Meena is first cousin of defendant No.2 Shiv Kumar and defendant No. 3 Suvesh and filed suit for declaration and injunction in respect of ancestral property as mentioned in the

plaint. Declaration was in respect of ownership and possession and injunction was to injunct defendant no.1 (present petitioner) not to interfere in the peaceful possession of plaintiffs.

3. Since matter pertains to primarily offence of ancestral/family property, therefore, when respective pleadings were completed then plaintiffs tried to incorporate some pleadings in respect of one subsequent event by which defendant No.1 took illegal possession during the pendency of the suit on 21.10.2016 and is cultivating the land. Therefore, plaintiff/respondent No.1 tried to incorporate those pleadings in the plaint. Along with that certain more pleadings were tried to be incorporated by plaintiffs regarding same facts which were missed out earlier.

4. Trial Court allowed the application preferred by plaintiffs for amendment. Therefore, defendant No.1 filed this petition challenging the said order.

5. It is the submission of learned counsel for petitioner that trial Court erred in passing the impugned order. By this application petitioner is trying to change the pleadings and nature of suit. Said incorporation is subsequent in nature. Therefore, application preferred by plaintiffs deserved dismissal. However, trial Court erred in allowing the said application.

6. To bolster his contentions, he placed reliance upon the judgment passed in the case of **Vidyabai and others Vs. Padmalatha and another [(2009) 2 SCC 409]**.

7. Learned counsel for respondents/State opposed the prayer

and narrated the facts.

8. Heard the learned counsel for the parties at length and perused the documents appended thereto.

9. This is a case where defendant No.1 has preferred this petition under Article 227 and is aggrieved by order of trial Court by which amendment application of plaintiffs has been allowed.

10. On close scrutiny, it appears that suit is being filed by plaintiff Meera against her cousin (brother) Shiv Kumar and Suvesh and present petitioner is also one of the defendants and appears to be son of Shiv Kumar. Therefore, dispute is between brother and sister for family property. Real brother of plaintiff Meera namely Suresh was bit mentally weak and expired. Therefore, property of brother Suresh is claimed to have been gone in favour of plaintiff No.2 Meera. However, as per allegations one Will dated 01.06.2007 has been forged by the defendant. Those facts were tried to be incorporated by the plaintiffs. If those pleadings are incorporated then it does not alter the nature of dispute and some of the pleadings are subsequent in nature also. Although, some pleadings ought to have been taken by the plaintiffs at the beginning because those facts were available at the time of filing of plaint. However, in the interest of justice, these pleadings are also required to be incorporated in the plaint to do substantial justice and to resolve the dispute finally between the family members for property.

11. Although, some of the pleadings were required to be

incorporated since instruction but looking to the overall facts and circumstances of the case, trial Court rightly passed the impugned order. Therefore, no case for interference is made out. Petition stands **dismissed**. However, the cost imposed as Rs.300/- is towards lower side. Additional cost of Rs.2500/- shall be paid by the plaintiffs to the defendant No.1 towards cost in addition to what they already deposited.

(ANAND PATHAK)
JUDGE

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