IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 17th OF DECEMBER, 2025

MISC. APPEAL No. 9755 of 2024

NARAYAN SINGH DIED THROUGH LEGAL HEIRS SMT. RAMVATI AND OTHERS

Versus

AATAM SINGH AND OTHERS

Appearance:

Shri Vikas Singhal - learned Counsel for appellants- defendants.

Shri Anuraj Saxena- learned Counsel for respondent No.1- plaintiff.

Shri Dileep Kumar Awasthi- learned Govt. Advocate for respondent No.2- defendant No.3

ORDER

This miscellaneous appeal under Order 43 Rule 1(u) of the Code of Civil Procedure has been filed by the appellants–defendants against the judgment and decree dated 15.10.2024 passed by the First District Judge, Karera, District Shivpuri (hereinafter referred to as the first appellate Court) in Regular Civil Appeal No. 46/2022, whereby the appeal preferred by respondent No.1–plaintiff was allowed, the judgment and decree dated 31.10.2022 passed by the Second Civil Judge, Senior Division, Karera, District Shivpuri (hereinafter referred to as the trial Court) in Regular Civil Suit No. 63-A of 2019 was set aside, and the matter was remanded to the trial Court with a direction to decide the suit afresh after recording evidence of both parties on amended pleadings.

2. Brief facts necessary for adjudication of the present appeal are that respondent No.1–plaintiff filed a suit for declaration and injunction against Narayan Singh and others before the trial Court on the ground that the disputed land comprises half share of land bearing Survey No.538 admeasuring 2.15 hectare, which was purchased vide registered sale deed dated 24.06.1998 jointly by the plaintiff and defendant No.1. After purchase, names of the plaintiff and defendant No.1 were mutated in the revenue records and both were cultivating the disputed land. It was further pleaded that defendant No.2 had neither title nor possession over the disputed land and had never remained in possession earlier. No notice of partition was served upon the plaintiff by the Court of Tehsildar and defendant No.1, in collusion with the Patwari and Tehsildar, managed to get his name mutated over the entire land. It was alleged that signatures of the plaintiff were obtained by playing fraud during partition proceedings under the pretext of KCC documents. It was further pleaded that defendant No.1 sold the disputed land to defendant No.2 vide registered sale deed dated 15.05.2018, pursuant to which defendant No.2 got his name mutated in the revenue records. It was also alleged that defendant No.1 had mortgaged the disputed land and obtained a loan and that defendant No.2 and his family members forcibly entered into possession and cultivation of the disputed land, which constrained the plaintiff to file the suit.

3. Defendant Nos.1 and 2 filed a joint written statement denying the averments made in the plaint. It was pleaded that the entire sale consideration was paid by defendant No.1 alone and that he alone remained in possession

of the disputed land. It was further pleaded that after execution of the sale deed, defendant No.2 is in possession of the disputed land. It was also pleaded that a consent agreement dated 12.05.2009 was executed by the plaintiff in presence of witnesses, wherein the loan of the bank was paid by defendant No.1 and the mortgaged tractor and machinery were handed over to the plaintiff, and in lieu thereof, the plaintiff gave consent for mutation of defendant No.1 over the disputed land, acknowledging that he had no right, title or interest therein. It was further pleaded that partition was carried out in accordance with law and with full knowledge of the plaintiff, but with an intention to take undue advantage, the plaintiff deliberately concealed the same. It was also pleaded that the suit was barred by limitation, that the plaintiff was not in possession of the disputed land, that no relief of possession was sought, and therefore the suit was not maintainable.

3. The trial Court framed issues on the basis of pleadings of the parties. Both parties led oral and documentary evidence. After hearing the parties, the trial Court dismissed the suit vide judgment and decree dated 31.10.2022.

4. Aggrieved by the said judgment and decree, the plaintiff preferred a first appeal before the first appellate Court. During pendency of the appeal, the plaintiff filed an application under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment of the plaint. Defendant Nos.1 and 2 filed a reply opposing the application. The first appellate Court, by judgment and decree dated 15.10.2024, allowed the appeal, set aside the judgment and decree passed by the trial Court, allowed the application for amendment, and

remanded the matter to the trial Court with a direction to decide the suit afresh after granting opportunity to both parties to lead evidence on amended pleadings.

5. Being aggrieved by the said order of remand, the present miscellaneous appeal has been filed.

6. Learned counsel for the appellants–defendants contended that the first appellate Court committed a grave legal error in setting aside the well-reasoned judgment and decree passed by the trial Court and in remanding the matter for a fresh trial. It is submitted that the impugned judgment is contrary to law and suffers from serious infirmities.

7. It is contended that the amendment allowed under Order 6 Rule 17 of the Code of Civil Procedure is wholly impermissible, as the proposed amendment is contradictory to the original pleadings of the plaintiff. In paragraph 2 of the plaint, the plaintiff had categorically pleaded that defendant No.2 neither had title nor possession over the disputed land and had never been in possession. Contrary to the said pleading, by way of amendment, the plaintiff sought to delete the earlier averment and claim possession of the disputed land from defendant No.2. Such contradictory pleadings, amounting to withdrawal of admissions, could not have been permitted at the appellate stage.

8. It is further contended that the application for amendment was filed on 24.04.2024 in an appeal preferred on 08.12.2022, whereas the alleged cause of action relating to possession arose much earlier. It is submitted that defendant No.1 was in exclusive possession after partition in the year 2004

and defendant No.2 came into possession after execution of the sale deed dated 15.05.2018. The relief of possession sought after more than 18 years is clearly barred by limitation. The trial Court had specifically decided Issue No.5 against the plaintiff, holding the suit to be barred by limitation, as no proceedings were initiated within three years of knowledge of partition. The first appellate Court failed to consider this material finding and remanded a time-barred suit, which is impermissible in law.

9. It is also contended that the trial Court had recorded a clear finding that no cause of action arose to the plaintiff in the year 2019, as alleged in the plaint. This finding was neither set aside nor reversed by the first appellate Court. In absence of a finding that the suit was maintainable, the first appellate Court could not have remanded the matter.

10. It is further contended that the trial Court, in paragraph 26 of its judgment, held that the plaintiff had knowledge of partition and subsequent mutation since the year 2004 and had also executed the agreement dated 12.05.2009. Despite such knowledge, no action was taken within the prescribed limitation period. The first appellate Court itself noted the partition proceedings reflected in the revenue records but, merely on the ground that no registered document was executed, disbelieved the title of defendant No.1 and remanded the matter, which amounts to a serious legal error.

11. It is submitted that the first appellate Court allowed the amendment on the premise that otherwise the title of the plaintiff would be defeated on technical grounds. It is argued that settled law does not permit a party to fill

up lacunae in its case, especially after having slept over its rights for years. The plaintiff, having admitted consent to partition and execution of the agreement, failed to prove fraud, and therefore was not entitled to any relief. The trial Court had rightly dismissed the suit, and the order of remand deserves to be set aside.

12. In support of contentions, learned Counsel for appellants has placed reliance on the decision of this Court in the case of *Shantilal (Dead) through Legal Representatives and Another vs. Ramesh Chandra and Another (Misc. Appeal No. 2919 of 2019, decided on 18th of August, 2025), Harishankar Vaishya vs. Mandir Shri Janki Mandir Trust (Misc. Appeal No. 6361 of 2023, decided on 11th of September, 2025) and Smt. Anita vs. Abdul Jalil and Others (Misc. Appeal No. 4810 of 2022, decided on 3rd of November, 2025).*

13. On the other hand, learned Counsel for the respondent no.1 supported the judgment and decree of the first appellate Court, arguing that there was no serious dispute regarding his ownership of the disputed land. He contended that the trial Court erred in dismissing the suit without allowing him an opportunity to seek appropriate relief of possession. Relying on Section 34 of the Specific Relief Act, 1963, the plaintiff submitted that the trial Court was obligated to permit amendment of the plaint to claim consequential relief, instead of outright dismissal. It was further argued that the amendment was necessary for a complete adjudication of the dispute, and no prejudice was caused to the defendants, as they were given full opportunity to contest the amended pleadings and lead evidence. Therefore,

the order of remand was justified and should not be interfered with. Hence, prayed for dismissal of this misc. appeal.

14. In support of contentions, learned Counsel for respondent No.1-plaintiff has relied on the following judgments:-

(A) In the matter of **Kalyansingh Vs. Vakilsingh and others AIR 1990 MP 295** it as held as under:-

> "20. The legal position that flows from the above said authorities is as under :
> (iv) Bar enacted by the proviso does not automatically entail dismissal of the suit but the plaintiff must be afforded an opportunity of amending the plaint if so desired"
> 21. It has to be stated that during the course of the hearing, the learned counsel for the plaintiff/appellant did make a prayer for being afforded an opportunity to amend the plaint. In the opinion of this Court, such an opportunity ought not to be denied to the plaintiff. It is, therefore, directed that the plaintiff may move an appropriate application for necessary amendment in the plaint so as to seek the further relief as to possession. A fortnight's time is granted for the purpose. "

(B) In the case of **Ram Pramod Kacchi Vs. Gayadeen and others, (2004) 4 MPHT 493**, it as held as under:-

> "In any case, as has been held in S. Bhagat Singh v. Satnam Transport Co. Ltd. and Ors., AIR 1961 Punjab 278, suit seeking declaration and injunction ought not to have been dismissed with reference to Section 34 of the Specific Relief Act. Instead, plaintiff/appellant should have been given opportunity to amend his plaint."

(C) The Division Bench of Punjab & Haryana High Court in **Bhagatsingh Vs. The Satnam Transport Company Ltd., AIR 1961 P& H 278** has held as under :-

> "17. However, as I look at the matter, in a case where the plaintiff who is able to sue for further relief, omits to do so and sues for a declaration alone, and the proviso to Section 42 of the Specific Relief Act is attracted, the Court should not dismiss the suit but should give the plaintiff an opportunity to amend his plaint so as

> to include a prayer for consequential relief. It is then for the plaintiff either to amend the plaint and include the prayer for consequential relief, or face the possibility of the suit being dismissed. But if after an opportunity to amend the plaint has been given to the plaintiff, he fails to avail of that opportunity, then there is no alternative but to dismiss the suit. This view finds support from Ham Sadan Biswas v. Mathura Mohan Hazra, AIR 1925 Cal 233; Annapurna Dasi v. Sarat Chandra, AIR 1942 Cal 394; Sabdarsinghji v. Ganpatsingji, ILR 14 Bom 395; Manohar Singh v, Parmeshari, AIR 1949 Nag 211; and Mohammad Ismail v. Liyaqat Hussain, AIR 1932 All 316."

(D) The aforesaid decision was followed by the Punjab and Haryana High Court in **D.A.V College Hoshiarpur Society Vs. Sarvada Nand Anglo Sanskrit Higher Secondary School, Managing Committee, Bassi Kallan, AIR 1967 Punjab & Haryana 501** in which it was held as under :-

> “6. The learned counsel for the appellant finally urged that the learned Additional District Judge should not have dismissed the suit after coming to the conclusion that it was not maintainable in the present form but should have remanded the same to the trial Court with a direction that the plaintiff should be given an opportunity to amend the plaint so as to bring it in the proper form. In this connection he relied on the cases of Mst. Rukhmabai v. Laxminarayan, AIR 1960 SC 835 and Bhagat Singh v. Stanam Transport Co., Ltd., 1960-82 Pun LR 924 = (AIR 1961 Punj 278), which no doubt support his view point. The learned counsel For the respondent and nothing to urge against this part of his prayer. I also feel that the learned Additional District Judge instead of dismissing the plaintiffs suit straight-away should have remanded it to the trial Judge with the necessary directions."

(E) In the case of **Lachhman Das and others Vs. Arjan Singh, 1962 SCC Online Punjab 190**, also it was held as under :-

> "8. The next question which arises for consideration is as to whether the plaintiff's suit should be dismissed because of his failure to ask for further relief in the shape of cancellation of rent note or whether the suit should be remanded, as prayed for in the alternative by the learned counsel for the respondents, for allowing an opportunity to the plaintiff to amend his plaint so as to include a prayer for a consequential relief. This matter has been dealt with in a Division Bench case S. Bhagat Singh v. Santam Transport Co. Ltd. and others, (supra) referred to above. The headnote, which has bearing on this case, reads as under :- "In a case where the

plaintiff who is able to sue for further relief, omits to do so and sues for a declaration alone and the proviso to Section 42 is attracted, the Court should not dismiss the suit but should give the plaintiff an opportunity to amend his plaint so as to include a prayer for consequential relief. It is then for the plaintiff either to amend the plaint and include the prayer for consequential relief, or face the possibility of the suit being dismissed. But if after an opportunity to amend the plaint has been given to the plaintiff, he fails to avail of that opportunity, then there is no alternative but to dismiss the suit."

9. Following the above authority, I am of the view that an opportunity should be given to the plaintiff to amend his plaint so as to include a prayer for consequential relief. It is then for the plaintiff either to amend the plaint and to include the prayer for consequential relief or face the possibility of the suit being dismissed. But if after an opportunity, then there is no alternative but to dismiss the suit."

(F) The Orissa High Court in **Mohd.Aftabuddin Khan and others Vs, Smt Chandan Bilasini and another, AIR 1977 Orissa, 69** held as under :-

"15. Finding this defect and relying upon the general prayer in the plaint and keeping in view the power of the Court to grant such reliefs as a party before it may be found entitled to, the Court directed the plaintiffs to recover possession on payment of the requisite court-fees. We agree with Mr. Dutta that if an amendment of the plaint had been asked for, it would have been more appropriate than the Court exercising suo motu jurisdiction. But we are not inclined to agree that the Court had no jurisdiction to do what has been done. Mr. Dutta was not in a position to indicate to us what prejudice has been caused to the defendants by not requiring the plaintiffs to make a formal application for amendment for addition of the relief of recovery of possession and in not giving an opportunity to the defendants to file a counter, In this view of the matter, we are not inclined to accept the contention of Mr. Dutta that the learned Single Judge committed an error of jurisdiction in allowing the relief of recovery of possession."

(G) In the case of **Rama Chandra Mohapatra Vs. Narayan Chandra Pradhan and others, 2011 AIR CC 844** it was held by the Orissa High Court as under :-

“8. The learned Trial Court has also referred to the decision of this Court in the case of Kishroe Chandra Pati Vs. The Orissa Road Transport Com.Ltd., (1989) 31 OJD 8 (Civil) and in the said

> judgment, this Court came to hold that instead of directing dismissal of the suit in the first instance for not seeking relief of declaration of title, the plaintiff should be called upon to pay the necessary Court fee for making necessary amendment in the plaint seeking relief of declaration of title.
> 9. In view of the aforesaid judgment, the Trial Court instead of dismissing the suit, granted the plaintiff an opportunity to make necessary amendment in the prayer and consequently to pay the necessary Court fee thereof."

(H) The Hon'ble Supreme Court in the case of **Mst. Rukhmabai Vs. Lala Laxminnarayan and others, AIR 1960 SC 335** observed as under :-

> "30. It is a well-settled rule of practice not to dismiss suits automatically but to allow the plaintiff to make necessary amendment if he seeks to do so."

(I) The Lahore High Court also in **Bua Ditta Vs. Ladha Mal, AIR 1919 Lahore 63** in similar circumstances directed the trial Court to allow the plaintiff an opportunity to amend his plaint so as to include the necessary prayer for consequential relief against the defendant and to value his relief and to pay Court fees on his valuation.

(J) The Delhi High Court in **M/s Maharaji Educational Trust and another Vs. Punjab and Sind Bank and another, AIR 2006 Delhi 226** also adopted a similar course while observing as under :-

> "35. The plaintiffs have failed to comply with the provisions of Section 34 of the Act and have failed to ask for a further and necessary relief. The suit normally would be liable to be dismissed. However, in the interest of justice an opportunity is granted to the plaintiffs to amend the suit within two weeks from today. In the event the plaintiff fails to take such appropriate steps, the suit of the plaintiffs shall be liable to be dismissed."

(K) The judgments passed by this Court (Gwalior Bench) in the case of *Smt. Munni Devi vs. Shanti Kumar and Others (Second Appeal No. 1341 of 2005, decided on 26-09-2014), (Ramsevak and Others vs. Smt. Omvati*

and Others (MA No. 79 of 2016, decided on 21-01-2016) and judgment of this Court (Main Seat Jabalpur) in MA No. 2682 of 2016, decided on 23-11-2017.

16. Heard learned Counsel for the parties at length. Perused the impugned judgment and decree passed by the trial Court as well as first appellate Court along with material available on record.

17.From paragraphs 17 and 18 of the cross-examination of the plaintiff, Aatam Singh, it is evident that he was fully aware of all material facts concerning the disputed land at the time of filing the suit. The plaintiff admitted in cross-examination that he had no dispute with Narayan Singh or his family from 1998 until 2019. He was also aware of the partition of the land in 2004. The plaintiff further acknowledged that Narayan Singh executed a registered sale deed in favour of Defendant No. 2, Rajendra Singh, and handed over possession accordingly. Despite having full knowledge of the transaction and the mutation of the land in the revenue records, the plaintiff did not challenge the sale deed or the mutation in any revenue court prior to filing the suit.

18. The plaintiff also admitted that he had signed the 2009 agreement concerning the land, which was executed in his favour with regard to bank loans and agricultural equipment, and failed to provide any evidence of alleged fraud or irregularity in its execution. Further, he acknowledged that he was fully aware of the cultivation and occupation of the land by Defendant No. 2, Rajendra Singh, and that he himself never cultivated the land nor remained in possession. The plaintiff conceded that his dispute with

Defendant No. 2 arose only in 2019, long after the partition and sale, thereby establishing that the suit was barred by limitation. Moreover, inconsistencies in the plaintiff's affidavit and his claim regarding possession and cultivation demonstrate that he was aware of the true state of affairs when filing the suit.

19. In view of the above admissions, it is clear that all material facts relied upon in the proposed amendment under Order 6 Rule 17 of the Code of Civil Procedure (CPC) were already known to the plaintiff at the time of filing the suit. The plaintiff's application under Order 6 Rule 17 CPC was essentially an attempt to fill a lacuna in the pleadings, rather than addressing any new or unforeseen facts. Allowing such an amendment and remanding the matter, as done by the first appellate Court, constitutes a serious legal error. It is well-settled law that a party cannot use the process of amendment to circumvent the principles of limitation and acquiescence. The trial Court, therefore, rightly dismissed the suit, as the plaintiff had slept over his rights and failed to challenge the partition, mutation, or agreement within the prescribed period.

20. Upon a detailed examination of the provisions of Order 6 Rule 17 CPC, it is evident that an amendment cannot be allowed to introduce facts that were already within the knowledge of the plaintiff at the time of filing the suit, nor can it be used to circumvent statutory bars such as limitation. The Hon'ble Apex Court, as well as High Courts in numerous decisions, has consistently held that amendments are not permissible to introduce facts that were already known to a party at the time of filing the suit. Similarly, it has been reiterated that amendments cannot be used as a tool to revive time-

barred claims or to circumvent limitation. The principle underlying these decisions is that allowing such amendments would defeat the very purpose of limitation statutes, which are designed to ensure finality and certainty in civil disputes.

21. The order of remand passed by the first appellate Court requires specific consideration. The first appellate Court's jurisdiction to remand a matter is derived from Order 41 Rule 23 of the CPC, which allows remand for further proceedings only where necessary to meet the ends of justice. However, remanding a matter for the purpose of allowing a party to introduce facts already known at the time of filing the suit, or to circumvent limitation, constitutes an abuse of appellate jurisdiction. The Court cannot permit amendments that would effectively allow a party to introduce known facts to circumvent legal bars.

22. Further, the plaintiff cannot rely on Section 34 of the Specific Relief Act, 1963, to justify the amendment at the appellate stage. Section 34 permits a Court to allow an amendment of pleadings if a suit is instituted without claiming certain consequential reliefs. However, this provision cannot override fundamental principles of limitation, acquiescence, or previously known facts. Allowing such an amendment, as done by the first appellate Court, improperly disregards the statutory bar and the trial Court's findings on limitation. In the present case, the plaintiff had complete knowledge of all relevant facts since 2004 and failed to initiate proceedings within the statutory period.

23. In view of the above discussion, the first appellate Court

committed a grave legal error in allowing the amendment under Order 6 Rule 17 CPC and remanding the matter. The plaintiff cannot be permitted to circumvent statutory provisions of limitation, nor can he be allowed to challenge transactions and agreements executed with his full knowledge and consent, after a lapse of several years. Allowing the amendment in such circumstances is contrary to settled principles of law, as held by the Hon'ble Apex Court in catena of decisions.

24. Accordingly, the miscellaneous appeal filed by the appellants–defendants deserves to be and is hereby allowed. The impugned judgment and decree dated 15.10.2024 passed by the first appellate Court is hereby set aside. The matter is remitted to the first appellate Court with a direction to decide Regular Civil Appeal No. 46/2022 on merits, in accordance with law, applying the settled principles of limitation, acquiescence, and admissibility of pleadings. The first appellate Court shall consider the evidence already recorded by the trial Court and provide both parties a fair opportunity to adduce additional evidence and make submissions strictly in accordance with law.

25. In view of the above, this miscellaneous appeal s**tands disposed of**. No order as to costs.

(HIRDESH)

JUDGE

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