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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE ANIL VERMA**

ON THE 20th OF MAY, 2024

MISC. PETITION No. 4683 of 2021

BETWEEN:-

**SONIBAI D/O LATE TULSIRAM MALI, AGED ABOUT 48
Y E A R S , OCCUPATION: AGRICULTURE R/O
KHATYAKHEDI, TEHSIL MALHARGARH, DISTRICT
MANDSAUR. PRESENTLY RESIDING AT RAILWAY
COLONY, SHAMGARH (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI GOURAV SHRIVASTAVA - ADVOCATE)

AND

- 1. BHAWARI BAI W/O LATE CHHAGANLAL JI MALI,
AGED ABOUT 77 YEARS, R/O KHATYAKHEDI,
TEHSIL MALHARGARH, DISTRICT MANDSAUR
(MADHYA PRADESH)**
- 2. KAMAL KUMAR S/O LATE CHHAGANLAL JI MALI,
AGED ABOUT 46 YEARS, R/O KHATYAKHEDI,
TEHSIL MALHARGARH, DISTRICT MANDSAUR
(MADHYA PRADESH)**
- 3. ASHOK KUMAR S/O LATE CHHAGANLAL JI MALI,
AGED ABOUT 33 YEARS, R/O KHATYAKHEDI,
TEHSIL MALHARGARH, DISTRICT MANDSAUR
(MADHYA PRADESH)**
- 4. SITABAI D/O LATE CHHAGANLAL JI MALI W/O
PUSHPLAL, AGED ABOUT 60 YEARS, R/O
GANGAPUR, DISTRICT BHILWARA (RAJASTHAN)**
- 5. MANOHARBAI D/O LATE CHHAGANLAL JI MALI
W/O RADHESHYAM, AGED ABOUT 50 YEARS, R/O
GANGAPUR, DISTRICT BHILWARA (RAJASTHAN)**
- 6. LILABAI D/O LATE CHHAGANLAL JI MALI W/O
PRAHLAD, AGED ABOUT 53 YEARS, R/O
GANGAPUR, DISTRICT BHILWARA (RAJASTHAN)**

7. **DHAPUBAI D/O LATE CHHAGANLAL JI MALI W/O JAGDISH, AGED ABOUT 51 YEARS, R/O GANGAPUR, DISTRICT BHILWARA (RAJASTHAN)**
8. **STATE OF M.P. THROUGH COLLECTOR, MANDSAUR (MADHYA PRADESH)**

....RESPONDENTS

(SHRI ATUL KUMAR GUPTA - ADVOCATE FOR RESPONDENTS NO.1 TO 7)
(SHRI AMIT RAWAL - GA FOR RESPONDENT NO.8/STATE)

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This petition coming on for admission this day, the court passed the following:

ORDER

1. Petitioner has preferred this miscellaneous petition under Article 227 of the Constitution of India being aggrieved by the impugned order dated 11.10.2021 passed by the appellate court and order dated 30.8.2019 (correct date is 5/10/2020) passed by the trial court.

2. Brief facts of the case are that Late Tulsiram filed an application before the Tehsildar for partition of the land in question claiming 1/2 portion of the same. Before the Tehsildar both the parties have filed a compromise petition for partition of the said disputed land and Tehsildar has passed an order dated 27.12.2011 and directed for partition as per the compromise deed. Late Tulsiram challenged the said order before the SDO in appeal, but vide order dated 17.1.2012 the appeal has been dismissed. Then Late Tulsiram filed second appeal before the Addl. Commissioner, Ujjain. During the pendency of the appeal, Tulsiram passed away and name of his legal heirs - petitioners No.1 & 2 were brought on record. The Addl. Commissioner set aside the order passed by the SDO stating that the partition is not proper. Being aggrieved by the same, respondents have filed a revision before the Board of Revenue and same has been dismissed vide order dated 28.6.2018. Then respondents

preferred Miscellaneous Petition No.4151/2018 before this Court and this Court vide order dated 29.1.2019 allowed the petition and remanded the matter to the Tehsildar to pass afresh order on partition of the said land. Then petitioner filed an application before the Tehsildar, which is still pending, but the respondents filed a Civil Suit before the Civil Judge Class-2, Narayangarh, District Mandsaur for declaration of validity of the compromise deed dated 27.11.2011. Then the learned trial Court has passed an order of interim injunction under Order 39 Rule 1 & 2 of CPC, the same has been upheld by the appellate court vide order dated 11.10.2021. Hence, this petition has been filed by the petitioner.

3. Learned counsel for the petitioner submits that the impugned orders passed by both the courts below are against the law and facts. Tulsiram was given only 4.75 Bigha land in place of 11.50 Bigha of his share, therefore, the partition was not proper. Revenue authorities have no jurisdiction to decide the issue of title. Hence, he prays that the impugned order passed by both the courts below be set aside and application under Order 39 Rule 1 & 2 of CPC deserves to be dismissed. सत्यमेव जयते

4. Per contra, learned counsel for respondents No.1 to 7 opposes the prayer by submitting that the impugned orders are just and proper and not deserve for any interference.

5. Respondent No.8/State is the formal party. Counsel for the State submits that the court may pass appropriate order as it may deem fit.

6. Counsel for both the parties heard at length and perused the entire record with due care.

7. From perusal of the documents filed by both the parties, it appears that both the parties have filed a joint compromise petition before the Tehsildar and on the basis of the compromise deed, Tehsildar has passed an order for

partition. At the time of partition nobody has objected that plaintiff's signature have been obtained on this deed fraudulently by the respondents. The petitioner himself after having active participation in the compromise proceedings, is estopped from questioning the tenability of same proceedings at this stage. The aforesaid objection raised by the petitioner is based upon an afterthought. It is the settled position of law that the order passed by the revenue authorities are not binding upon the civil court and revenue court cannot decide the question of title of any property. When the civil suit is pending, all the issues raised in this petition can be decided before the trial Court after recording the evidence.

8. After considering the facts and circumstances of the case, this Court is of the considered opinion that the order passed by the revenue authorities are not binding upon the trial Court. The trial court has passed an order of restraining the appellant from alienating the suit property and creating any third party right over the suit property, it may not cause any prejudice to the petitioner and necessary to maintain status quo in respect of the land in question.

9. In the light of the aforesaid analysis, as no patent illegality has been committed by the trial Court and the order passed by the trial Court does not suffer from any jurisdictional error, therefore, this Court does not find any reason to interfere in the impugned orders. Accordingly this miscellaneous petition filed by the petitioner is hereby dismissed.

(ANIL VERMA)
JUDGE