

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

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

CIVIL REVISION No. 383 of 2022

BETWEEN:-

**SMT. SUCHITRA DUBEY W/O DR. R.K.DUBEY, AGED
ABOUT 60 YEARS, OCCUPATION: EDUCATIONALIST
29/2, NEW PALASIA (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI VEER KUMAR JAIN, LEARNED SENIOR ADVOCATE WITH
SHRI DEVASHEESH DUBEY - ADVOCATE)***

AND

**1. SATTAR S/O LATE SHRI IBRAHIM PATEL, AGED
ABOUT 60 YEARS, OCCUPATION:
AGRICULTURIST VILLAGE KANADIYA YOGA,
TEHSIL INDORE (MADHYA PRADESH)**

**2. LATE GAFFAR S/O LATE IBRAHIM PATEL THR.
LRS. DILSHAD S/O LATE GAFFAR PATEL
OCCUPATION: AGRICULTURIST VILLAGE
KANADIYA YOGA, TEHSIL AND DISTRICT INDORE
(MADHYA PRADESH)**

**3. LATE GAFFAR S/O LATE IBRAHIM PATEL THR.
LRS. AFSAR S/O LATE GAFFAR PATEL
OCCUPATION: AGRICULTURIST VILLAGE
KANADIYA YOGA, TEHSIL AND DISTRICT INDORE
(MADHYA PRADESH)**

**4. LATE GAFFAR S/O LATE IBRAHIM PATEL THR.
LRS. IRSHAD S/O LATE GAFFAR PATEL
OCCUPATION: AGRICULTURIST VILLAGE
KANADIYA YOGA, TEHSIL AND DISTRICT
INDORE (MADHYA PRADESH)**

LATE GAFFAR S/O LATE IBRAHIM PATEL THR.
LRS.NASEEM S/O LATE GAFFAR PATEL
5. OCCUPATION: AGRICULTURIST VILLAGE
KANADIYA YOGA, TEHSIL AND DISTRICT
INDORE (MADHYA PRADESH)

LATE GAFFAR S/O LATE IBRAHIM PATEL THR.
LRS. MALKA BI W/O LATE GAFFAR PATEL
6. OCCUPATION: AGRICULTURIST VILLAGE
KANADIYA YOGA, TEHSIL AND DISTRICT
INDORE (MADHYA PRADESH)

LATE SHAREEF S/O LATE IBRAHIM PATEL THR.
LRS.ARAB S/O LATE SHAREEF PATEL
7. OCCUPATION: AGRICULTURIST VILLAGE
KANADIYA YOGA, TEHSIL AND DISTRICT
INDORE (MADHYA PRADESH)

LATE SHAREEF S/O LATE IBRAHIM PATEL THR.
LRS. SHAVAAB S/O LATE SHAREEF PATEL
8. OCCUPATION: AGRICULTURIST VILLAGE
KANADIYA YOGA, TEHSIL AND DISTRICT
INDORE (MADHYA PRADESH)

LATE SHAREEF S/O LATE IBRAHIM PATEL THR.
LRS. FIROOZ S/O LATE SHAREEF PATEL
9. OCCUPATION: AGRICULTURIST VILLAGE
KANADIYA YOGA, TEHSIL AND DISTRICT
INDORE (MADHYA PRADESH)

LATE SHAREEF S/O LATE IBRAHIM PATEL THR.
LRS. SHABANA D/O LATE SHAREEF PATEL
10. OCCUPATION: AGRICULTURIST VILLAGE
KANADIYA YOGA, TEHSIL AND DISTRICT
INDORE (MADHYA PRADESH)

LATE SHAREEF S/O LATE IBRAHIM PATEL THR.
LRS. SALMA D/O LATE SHAREEF PATEL
11. OCCUPATION: AGRICULTURIST VILLAGE
KANADIYA YOGA, TEHSIL AND DISTRICT
INDORE.

12. LATE SHAREEF S/O LATE IBRAHIM PATEL THR.
LRS. SHARMILA D/O LATE SHAREEF PATEL
OCCUPATION: AGRICULTURIST VILLAGE
KANADIYA YOGA, TEHSIL AND DISTRICT

INDORE (MADHYA PRADESH)

LATE SHAREEF S/O LATE IBRAHIM PATEL THR. LRS. SHABBO D/O LATE SHAREEF PATEL

- 13. OCCUPATION: AGRICULTURIST VILLAGE KANADIYA YOGA, TEHSIL AND DISTRICT INDORE (MADHYA PRADESH)**

LATE SHAREEF S/O LATE IBRAHIM PATEL THR. LRS. ZAREENA BI W/O LATE SHAREEF

- 14. PATEL OCCUPATION: AGRICULTURIST VILLAGE KANADIYA YOGA, TEHSIL AND DISTRICT INDORE (MADHYA PRADESH)**

MANSOOR @ MANSUKH S/O LATE IBRAHIM PATEL, AGED ABOUT 40 YEARS, OCCUPATION:

- 15. AGRICULTURIST VILLAGE KANADIYA YOGA, TEHSIL AND DISTRICT INDORE (MADHYA PRADESH)**

AAMNA BI W/O LATE IBRAHIM PATEL, AGED ABOUT 70 YEARS, OCCUPATION:

- 16. AGRICULTURIST VILLAGE KANADIYA YOGA, TEHSIL AND DISTRICT INDORE (MADHYA PRADESH)**

SANJAY DABRA S/O LATE. SHRI. INDRAPAL SINGH DABRA, AGED ABOUT 55 YEARS,

- 17. OCCUPATION: BUSINESS 2ND FLOOR, 145/A9, WARD NO. 9 KISAAN GRAH, NEW DELHI (DELHI)**

STATE OF MADHYA PRADESH THROUGH COLLECTOR COLLECTORATE, MOTI TABELA, INDORE (MADHYA PRADESH)

- 18. INDORE DEVELOPMENT AUTHORITY THROUGH AUTHORISED OFFICER 7, RACE COURSE ROAD, INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENTS NO.1, 2 & 4 TO 14 BY SHRI SUNIL KUMAR JAIN, LEARNED SENIOR ADVOCATE WITH SHRI RISHI PALIWAL – ADVOCATE, RESPONDENT NO.3 BY SHRI KAMAL NAYAN AIREN – ADVOCATE, RESPONDENT NO.17 BY SHRI YASHWARDHAN TIWARI – ADVOCATE)

.....
Reserved on : 29.03.2023

Pronounced on : 30.06.2023
.....

This petition having been heard and reserved for orders, coming on for pronouncement this day, the court passed the following:

ORDER

1. This Revision under Section 115 of the CPC has been preferred by defendant No.6/petitioner being aggrieved by order dated 05.07.2022 passed by 4th Additional District Judge, Indore in Civil Suit No.31-A/2016 whereby her application under Order 7 Rule 11 read with Section 151 of the CPC for rejection of the plaint has been rejected.
2. The plaintiffs/respondents No.1 to 3 have instituted an action on 11-03-2016 for declaration of their title to the suit lands, for declaration that mutation in favour of defendants 1 and 2 and the sale deed dated 24-05-2006 executed in favour of defendant No.3 is null and void and for permanent injunction restraining the defendants from interfering with their possession over the suit lands.
3. On 06.05.2022 defendant No.6 filed an application under Order 7 Rule 11 of the CPC for rejection of the plaint on the ground that the same is barred by time as per Article 58 of the Limitation Act, 1963. There has been gross suppression of material facts, fraud and malice on part of plaintiffs. Two suits instituted by them earlier have already been dismissed as withdrawn in 2008 and 2009 respectively which fact has

been concealed by them. The plaintiffs had instituted various proceedings before the Revenue Courts with respect to the suit lands which have already been decided in the year 2008-2009 itself. The plaintiffs are neither in possession nor have any title to the suit lands. The plaint is hence liable to be rejected. The plaintiffs contested the application by filing their reply to the same.

4. By the impugned order the trial Court has rejected the application by holding that the grounds which have taken by defendant No.6 for rejection of the plaint are not sufficient. Plaintiffs are challenging a void sale deed and mutation is not proof of title. They have claimed to be in possession of the suit lands hence the plaint is not liable to be rejected.

5. Learned Senior Counsel for defendant No.6 has submitted that the impugned order is illegal and contrary to law. The suit as per the plaint averments themselves is barred under Article 58 of the Limitation Act, 1963 and does not require any evidence to be led. The plaintiffs were always aware of the sale deed and the mutation entries in favour of defendants. The plaint is vexatious, mischievous and is an abuse of process of law and deserves to be rejected at this stage itself. Various public documents which have been filed by defendant No.6 in this revision clearly demonstrate that the suit is barred by law. The plaint has to be read as a whole and not in isolation and when read in its entirety it leaves no room for doubt that the same is frivolous and vexatious. Reliance has been placed on the decision of the Supreme

Court in **Dahiben V/s. Arvinbhai Kalyanji Bhanusali (Gajra) (dead) through LRs and others (2020) 7 SCC 366, Khatri Hotels Private Limited and Another V/s. Union of India and Another (2011) 9 SCC 126, Howrah Daw Mangla Hat B.B. Samity V/s. Pranab Kumar Daw (2001) 6 SCC 534, T. Arivandandam V/s. T.V.Satyapal and Another (1977) 4 SCC 467** and various other decisions of the Supreme Court and of this Court on the same lines.

6. Per contra learned counsel for plaintiffs have submitted that the impugned order is perfectly just and legal and needs no interference. The claim is well within time which is even otherwise a mixed question of facts and law. The plaintiffs are in possession of the suit lands. The grounds raised by defendant No.6 in her application under Order 7 Rule 11 of the CPC can be considered only at the appropriate stage and not at this stage. In the alternate, it is also submitted that an application under Order 6 Rule 17 of the CPC was filed by plaintiffs before the trial Court on 02.07.2022 which is still pending and the same ought to have been decided prior to deciding the application under Order 7 Rule 11 of the CPC. In this regard, reliance has been placed on the decision of the Delhi High Court in **Rajesh Kumar Mehlawat V/s. Naresh Gupta 2017 SCC OnLine Del 9645**, of the Punjab and Haryana High Court in **Dera Baba Bhumman Shah Sangar Sarista V/s. Dr. Subhash Narula 2020 SCC OnLine P & H 1625**, and **Gaganmal Ramchand V/s. Hongkong and Shanghai Banking Corporation AIR**

1950 Bom 345.

7. Learned counsel for defendant No.3 has supported defendant No. 6 and has submitted that the trial Court has erred in rejecting the application filed by her. Reliance has been placed by him on the decisions which have been relied upon by the contesting parties.

8. I have considered the submissions of learned counsel for the parties and have perused the record.

9. Though various submissions have been made by learned counsel for the parties on merits of the impugned order, but the record shows that on filing of application under Order 7 Rule 11 of the CPC by defendant No.6 on 06.05.2022, the plaintiffs filed an application under Order 6 Rule 17 of the CPC on 27.07.2022. That application was admittedly not decided by the trial Court prior to passing of the impugned order deciding the application under Order 7 Rule 11 of the CPC. The question which thus arises is as to whether the trial Court ought to have first decided the application under Order 6 Rule 17 of the CPC filed by plaintiffs and only thereafter should have proceeded to consider the application under Order 7 Rule 11 of the CPC.

10. In **Dera Baba Bhumman Shah Sangar Sarista (supra)** it was categorically held that the application under Order 6 Rule 17 of the CPC has to be decided before the decision of the application under Order 7 Rule 11 of the CPC. The order on application under Order 7 Rule 11 prior to decision of pending application under Order 6 Rule 17

is an illegality and that pending application ought to have been decided prior to decision on the application under Order 7 Rule 11. In **Rajesh Kumar Mehlawat (supra)** also it was held, though on the basis of concession, that the settled principle of law is that an application under Order 6 Rule 17 of the CPC even if filed after filing of an application under Order 7 Rule 11 of the CPC or before the order on such an application is pronounced, has to be considered first.

11. In **Gaganmal Ramchand (supra)** it was held that the power of the Court to allow amendment of pleadings should not in any manner be restricted or controlled by the provisions contained in Order 7 Rule 11 of the CPC. Though it is incumbent upon the Court to reject the plaint that does not disclose a cause of action but it does not follow that it is not open to the Court to allow a plaint to be amended so that it should disclose a cause of action. The Court may prevent the operation of Order 7 Rule 11 of the CPC and save the plaint from being rejected by exercising its power under Order 6 Rule 17. It was held as under :-

“ Mr. Seervai's argument is that when a plaint comes before the Court and that plaint does not disclose a cause of action, it is mandatory upon the Court to reject that plaint and dismiss the suit and the Court has no power to permit the plaint to be amended. In other words, Mr. Seervai's contention is that O. VI, r. 17, is controlled by O. VII, r. 11, and in cases falling under O. VII, r. 11, the Court has no jurisdiction to order the amendment of the plaint. I am unable to accept that contention. I see no reason whatever why the power of the Court to allow amendment of pleadings should be in any way restricted or controlled by the provisions contained in O. VII, r. 11. It is perfectly true that it is incumbent upon the Court to reject a plaint that does not disclose a cause of action, but it does not follow that it is not open to the Court to allow a plaint to be

amended so that it should disclose a cause of action. It is only when a plaint does not disclose a cause of action that the Court is called upon to exercise its power under O. VII, r. 11. But the Court may prevent the operation of O. VII, r. 11, and may save the plaint being rejected by exercising its power under O. VI, r. 17, and allowing the plaint to be amended. It would indeed be an extraordinary proposition to lay down that if various averments had to be made in the plaint which would go to constitute a cause of action, and by some oversight or some mistake the plaintiff failed to make one of the averments, then in that case the plaint must be dismissed and the plaintiff could not apply for an amendment and make the necessary averment.

12. **In Wasudhir Foundation V/s. C. Lal & Sons DRJ 1991 (Supp) 483** it was held by the High Court of Delhi that Order 6 Rule 17 is neither restricted nor controlled by Order 7 Rule 11 of the CPC. It was held in paragraph No.5, 7 and 9 as under :-

“5. This is the righteous path and, if this be so is it not necessary, in the ends of justice, to extend the beneficial legal principles enshrined in Order 6 rule 17 More so, when one hardly discerns any-thing in Order 7 rule 11 which may lead one to take the view that it takes away the power of the court to allow amendment or places hurdles in performance of its duty? After all what is the effect of Order 7 rule 11? It is, if I understand correctly, that the plaintiff would not be precluded from filing a fresh suit in respect of the same cause of action if he so desires. See Order 7 Rule 13. If such be the effect, why not permit the amendment of the plaint so as to remove the defect and prevent the operation of the Rule? Why make him first invite the rejection of the plaint, then allow him to file a fresh suit at the expense of delay and heavy costs? Why not straightaway allow him to amend the plaint, remove the defect and

permit him, thereby, to proceed with the same suit? Why this rigmarole? After all, procedural law is intended to facilitate and not to obstruct the course of justice.

7. The ouster of Order 6 rule 17 will throttle the very life line of Order 7 rule 11. Instead of promoting, it would defeat the ends of justice. I refuse to be a party to such an approach.

9. Order 6 rule 17 is thus held to be neither restricted nor controlled by Order 7 rule 11.”

13. Further more in **Pramod V/s. Shantaram Balkrushna Dhok 2017 (3) Mh.L.J 223** it was held that application for amendment of plaint should be considered on its own merits before consideration of application for rejection of the plaint. It was held in paragraph No. 5 as under :-

“5. After considering the submissions made by the learned Advocates for the respective parties, I am of the view that the learned trial Judge has committed an error in rejecting the application (Exhibit No. 27) and refusing to consider the application (Exhibit No. 22) before considering the application (Exhibit No. 18). The provisions of Order VII, Rule 13 of the Code of Civil Procedure lay down that if the plaint is rejected under Order VII, Rule 11 of the Code of Civil Procedure, then the plaintiff is not precluded from presenting a fresh plaint in respect of the same cause of action. Thus if the application (Exhibit No. 18) is decided first and the trial Court finds favour with the defendant, then the plaint shall be rejected and it would be permissible for the plaintiff to file fresh plaint including the proposed amendment in the pleadings. Thus, in my view, it will not serve any purpose by not considering the application (Exhibit

No. 22) before considering the application (Exhibit No. 18). Of course the application (Exhibit No. 22) will have to be considered on its own merits according to law.”

14. The position which hence emerges is that the provisions of Order 6 Rule 17 of the CPC are not restricted or controlled by provisions of Order 7 Rule 11 of the CPC. Where an application under Order 6 Rule 17 is filed and is pending then the same ought to be decided first prior to decision on the application under Order 7 Rule 11. The same would be more so when the application under Order 6 Rule 17 is filed pursuant to filing of an application under Order 7 Rule 11 and intends to remedy the defects as pointed out in the said application. Such consideration of an application under Order 6 Rule 17 would be in the interest of justice. If there is some objection as regards maintainability of the claim and that objection is sought to be remedied by plaintiff by appropriately amending the plaint, then such amendment application needs to be considered first.

15. As per Order 7 Rule 13 of the CPC where a plaint is rejected under Order 7 Rule 11 then plaintiff is not precluded from presenting a fresh plaint in respect of the same cause of action. Thus, if the application under Order 7 Rule 11 of the CPC is decided first and the plaint is rejected it would still be permissible for plaintiff to file a fresh plaint and including therein the proposed amendment in the pleadings. That would not serve any purpose but would only be a prolongation of

the proceedings and shall result in unnecessary expenditure and delay for both the parties. It would be proper to permit amendment of the plaint so as to remove the defect therein.

16. The Trial Court hence ought to have first decided the application Under Order 6 rule 17 of the CPC filed by plaintiffs and thereafter only should have proceeded to decide the application Under Order 7 Rule 11 filed by defendant No.6. In not doing so it has exercised its jurisdiction with material irregularity.

17. Thus, in view of the aforesaid discussion, the impugned order is set aside. The trial Court is directed to consider the application under Order 6 Rule 17 of the CPC filed by plaintiffs and after lawful decision of the said application to reconsider the application under Order 7 Rule 11 of the CPC in accordance with law. It is made clear that this Court has not expressed any opinion on merits of the case and the trial Court shall decide both the applications under legal parameters.

18. The Revision is accordingly disposed off.

(PRANAY VERMA)
JUDGE