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MP-4297-2022

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

MISC. PETITION No. 4297 of 2022*MOHAMMED ARIF AND OTHERS**Versus**SMT. KAMALABAI AND OTHERS*

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Appearance:

*Shri Amit Agrawal - Senior Advocate along with Shri Rohit Mangal - Advocate  
for the petitioners.*

*Shri Sanjay P. Joshi - Advocate for respondent No.12.*

*Shri Sunil Kumar Jain, Senior Advocate along with Shri Harshwardhan Singh -  
Advocate for intervenor.*  
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Reserved on :- 17.05.2025

Pronounced on :- 16.06.2025

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ORDER

This petition under Article 227 of the Constitution of India has been preferred by the plaintiffs/petitioners being aggrieved by the order dated 27.08.2022 (Annexure P/23) passed in RCS A-22/2018 by the 20<sup>th</sup> District Judge, District Indore whereby while considering an application under Order 7 Rule 11 of the CPC preferred by defendants No.1, 6, 10, 11, 12, 13, 17, 18, 19 and 21 they have been granted an option to continue the suit in respect of one agreement to sale executed between the parties and to file six separate civil suits in respect of the other six agreements to sale for their specific performance.

02. As per the plaintiffs, the suit land bearing Survey No.507 area



3.015 hectare, Village Mundla Nayata, Tehsil and District Indore was held by the predecessors of defendants. After their death, the defendants became the owners of the same. The plaintiffs entered into seven separate registered agreement to sale with the defendants on different dates for purchasing their undivided and unidentified respective shares in the suit land. The total consideration of all the agreements was Rs.2,71,00,000/- out of which a sum of Rs.2,64,00,000/- was paid by way of earnest money. On 16.10.2017 remaining amount of sale consideration of Rs.7,00,000/- was also paid to the defendants. The only remaining act to be performed was execution of registered sale deed by defendants in favour of plaintiffs who have however not done so.

03. The plaintiffs have hence on 06-08-2018 instituted an action before the trial Court for specific performance of the contracts entered into by them with the defendants jointly, for possession of the suit land and for permanent injunction restraining the defendants from alienating the suit land in any manner.

04. Upon service of summons upon them, defendants No.1, 6, 10, 11, 12, 13, 17, 18, 19 and 21 filed an application under Order 7 Rule 11 of the CPC for rejection of the plaint submitting intr alia that deficit Court fees has been affixed thereupon and that the suit suffers from misjoinder of parties and misjoinder of causes of action. The plaintiffs contested the application by filing their reply to the same.

05. By the impugned order, the trial Court has held that as per provisions of Order 1 Rule 3-A and Order 2 Rule 6 of the CPC, the suit with



regard to one agreement is maintainable and for remaining six agreements, it is not maintainable and the plaintiffs may exercise option to continue the suit in respect of one agreement and may file separate suits in respect of the other agreements. It has held that there has been misjoinder of causes of action. The plaintiffs are required to prove all the seven agreements separately against separate defendants and payment of considerations to different defendants and the Court would also be required to give its decision on each agreement separately. Even if plaintiff's claim is decreed, then also the defendants of each agreement would execute separate sale deed in favour of plaintiffs as per their shares in the suit land. The execution proceedings would also be separate hence if in respect of all the seven agreements, one suit is tried it would result in great complications and delay in trial.

06. Learned senior counsel for the plaintiffs has submitted that the question of misjoinder of parties under Order 1 Rule 3-A of the CPC and of misjoinder of causes of action under Order 2 Rule 6 of the CPC is beyond the scope of Order 7 Rule 11(d) of the CPC in as much as a suit either bad for misjoinder of parties or misjoinder of causes of action does not render the same as barred by law. In this regard reliance has been placed on the decision of the Apex Court in **Prem Lala Nahata and Another Vs. Chandi Prasad Sikaria**, 2007 (2) SCC 551 and of the Delhi High Court in **Carlsberg Breweries Vs. Som Distilleries and Breweries Limited** AIR 2019 Delhi 23. It is further submitted that though seven different agreements have been executed by seven different sets of defendants but are in respect of their respective undivided shares in one undivided Survey number. Instead of



Order 1 Rule 3-A and Order 2 Rule 6, Order 2 Rule 3 of the CPC shall apply. It is also submitted that six out of seven agreements have same set of two attesting witnesses and remaining one agreement has one additional attesting witness. Thus, with regard to all the seven agreements, only three attesting witnesses shall have to be examined along with the plaintiffs which shall facilitate proceedings of trial saving time whereas in holding seven separate trials, much more time would be wasted. In this regard reliance has been placed on the decision of the Apex Court in **Hema Khattar Vs. Shiv Khera 2017 (7) SCC 716** and of Himachal Pradesh High Court in **State Bank of Patiala Vs. Hypine Carbons Ltd. AIR 1990 HP 10**. Separate trial as used in Order 1 Rule 3-A and Order 2 Rule 6 of the CPC cannot be expanded to include separate civil suits. Separate trials do not mean separate civil suits rather in case of requirement, separate trials may be held in one suit without any need to file separate suits. For this proposition reliance has been placed on the decision of the Guwahati High Court in **Sudhir Chandra Deb Vs. Parsuram Prasad Verma 1992 (1) Gau LR 250 (Guwahati)** and of the Karnataka High Court in **Pujari Chikkanna Vs. G. Thimmaiah 2010 SCC Online KAR 5193**. It is also submitted that the pleadings as made in the written statement could not have been considered but have been considered by the trial Court illegally. In this regard reliance has been placed on the decision of the Apex Court in **Saleem Bhai Vs. State of Maharashtra 2003 (1) SCC 557** and **Shakti Bhog Food Industries Limited versus Central Bank of India, 2020 (17) SCC 260**. The impugned order has partly rejected the plaint with regard to six agreements which is wholly impermissible as laid



down in **Vinod Kumar Tamrakar Vs. Mukesh Kumar Agrawal** 2008 (1) **MPLJ** 213 and **Sejal Glass Ltd. Vs. Navilan Merchants Pvt. Ltd.** 2018 (11) **SCC** 780. It is hence submitted that the petition be allowed.

07. Per contra, learned counsel for the appearing defendants have submitted that no error has been committed by the trial Court in passing the impugned order. In respect of seven separate agreement to sale executed by plaintiffs with different sets of defendants in respect of separate shares in the suit land, one civil suit has been instituted by plaintiffs. The agreements are distinct, their dates are different, the sale considerations mentioned therein are different, the defendants are different and their shares in the suit land are different. The plaintiffs would be required to prove all the seven agreements to sale separately against separate sets of defendants. They would also have to prove the fact of payment of sale considerations to different defendants separately and the Court would also be required to give its decision on each and every agreement separately. If in respect of all the agreements, one trial is held it would lead to great complications in the matter hence the trial Court has not committed any error in passing the impugned order in exercise of powers under Order 1 Rule 3-A and Order 2 Rule 6 of the CPC. The impugned order is a discretionary order and is not liable to be interfered with in a petition under Article 227 of the Constitution of India. Reliance has been placed by him on the decision of the Apex Court in **Anil Kumar Singh versus Shivnath Mishra and Gadasa Guru** 1990 (3) **SCC** 147, of this Court in M.P. No.5944 of 2022 (**Remound Estate Pvt. Ltd. Vs. Mohammad Saleem Ghori and Others**) decided on 7.12.2022 and **Halka Kushwaha and Others Vs.**



**Pyarelal Kachhi and Others 2017 (2) MPLJ 428.**

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

09. Though it has been contended by learned counsel for plaintiffs that the averments as made in the written statement could not have been relied upon while deciding the application under Order 7 Rule 11 of the CPC but a perusal of the impugned order shows that there is a mere fleeting reference to the written statements filed by the contesting defendants and the averments as made therein have only been referred to but have not been relied upon in passing the impugned order hence it has not made any difference. It has also been submitted that the plaint could not have been rejected in part. The same could have been rejected either as a whole or not at all. The same has however been rejected in respect of six agreement to sale. However, from a perusal of the impugned order it is evident that in respect of these six agreements to sale, the plaint has not been rejected and plaintiffs have been merely given an option of instituting six separate civil suits in respect of six agreement to sale. That would not have been the case in case the plaint had been rejected in respect of them since then plaintiffs would not have been granted liberty to file separate civil suits. These grounds raised by plaintiffs hence do not have any merit.

10. The controversy in the present case revolves around the provisions of Order 1 Rule 3, Order 1 Rule 3-A, Order 2 Rule 3 and Order 2 Rule 6 of the CPC which are as under:-

**"Order 1 Rule 3**

**Who may be joined as defendants.**—All persons may be joined in one suit as



*defendants where—*

*(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and*

*(b) if separate suits were brought against such persons, any common question of law or fact would arise."*

**"Order 1 Rule 3-A**

**3-A. Power to order separate trials where joinder of defendants may embarrass or delay trial.**—Where it appears to the Court that any joinder of defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient in the interests of justice."

**"Order 2 Rule 3**

**Joinder of causes of action.**—(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit."

**"Order 2 Rule 6**

**Power of Court to order separate trials.**—Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice."

11. Though in *Prem Lala Nahata (Supra)* it has been held by the Apex Court that misjoinder of causes of action and misjoinder of parties under Order 2 Rule 6 and Order 1 Rule 3-A by themselves do not render the plaint to be barred by any law within the parameters of Order 7 Rule 11 of the CPC but it is seen that though application had been preferred by some of the defendants under Order 7 Rule 11 of the CPC but by way of the impugned order, the plaint has not at all been rejected. The same has been directed to



be continued in respect of one agreement to sale and with respect to other six agreements, plaintiffs have been granted liberty to file six separate suits. Had the trial Court considered misjoinder of parties and misjoinder of causes of action to be rendering the plaint as barred by law, instead of giving directions as above it would have rejected the plaint. Though the impugned order has been passed while considering an application under Order 7 Rule 11 of the CPC, but the fact remains that directions issued thereunder are under the provisions of Order 1 Rule 3-A and Order 2 Rule 6 of the CPC. These provisions could be considered by the trial Court at any stage of proceedings and only for the reason that they have been considered while deciding an application under Order 7 Rule 11 of the CPC, it cannot be said that any illegality has been committed by the trial Court. For exercising powers under these provisions, no fixed stage of proceedings has been prescribed in the CPC.

12. As per Order 1 Rule 3 of the CPC, all persons may be joined in one suit where right to relief in respect of, or arising out of, the same act or transaction is alleged to exist against such persons or if separate suits were brought against such persons, common questions of fact or law would arise. Order 1 Rule 3-A of the CPC gives power to the Court to direct separate trials where joinder of the defendants may embarrass or delay the trial. When it so appears to the Court, it may order separate trials or may make such other order as may be expedient in the interest of justice. Order 2 Rule 3 of the CPC permits plaintiffs to unite in the same suit several causes of action against same defendants jointly or to join in the same suit causes of action in





which plaintiffs and defendants are both jointly interested.

13. In the present case, plaintiffs have entered into seven separate agreement to sale. In all of them, the defendants are different. The extent of land in all the agreements is also different. The amount of sale consideration of each agreement is different. The plaintiffs could hence be required to prove all the seven agreement to sale separately in respect of respective defendants with whom they have been entered into. They would also have to prove payment of sale consideration to individual sets of defendants separately. The Court would also be required to decide the questions as regards each agreement to sale separately. That would include limitation, Court fees and valuation etc. Since it is a suit for specific performance of contract, readiness and willingness by the respective parties would have to be considered and also the question as to who is in breach of the contract. There are no common allegations between the plaintiffs and different sets of defendants in respect of their agreements. There hence cannot be joinder of causes of action in respect of each and every agreement and joinder of parties in respect of separate sets of defendants with whom they have been entered into when every agreement to sale and its performance and/or non-performance constitutes separate cause of action. The finding of the trial Court to the effect that claim of plaintiffs seeking specific performance of seven agreement to sale entered into by them with different sets of defendants cannot be proceeded with in terms of Order 1 Rule 3-A and Order 2 Rule 6 of the CPC is hence perfectly justified.

14. Further question which would require consideration is as to what



course the trial Court ought to have adopted upon recording the aforesaid finding. In this regard guidance may be taken from the decision of the Apex Court in *Prem Lala Nahata (Supra)* in which the Apex Court held that the Court has wide discretionary power to control conduct of proceedings when there has been joinder of causes of action or parties which may embarrass or delay the trial or is otherwise inconvenient. The Court is still competent to try and decide the suit though it may also tell the plaintiff to proceed with a part of the suit or to proceed with one of the causes of action or to proceed to try the causes of action joined in the suit as separate suits. The Court has the liberty even to treat the plaint in such a suit as relating to two suits and try and dispose them of on that basis. The Court may exercise the power either by ordering separate trials of the claims in respect of two or more causes of action included in the same action or confining the action to some of the causes of action and excluding the others or by ordering the plaintiffs to elect which cause of action is to be proceeded with or by making such other order as may be expedient. It has been held as under:-

*"15. \*\*\*\* In the context of these provisions with particular reference to the rules in Order 1 and Order 2 of the Code, it is clear that an objection of misjoinder of plaintiffs or misjoinder of causes of action, is a procedural objection and it is not a bar to the entertaining of the suit or the trial and final disposal of the suit. The court has the liberty even to treat the plaint in such a case as relating to two suits and try and dispose them of on that basis.*

*16. \*\*\*\*\* Therefore, by no stretch of imagination, can a suit bad for misjoinder of parties or misjoinder of causes of action be held to be barred by any law within the meaning of Order 7 Rule 11(d) of the Code.*

*19. It is recognised that the court has wide discretionary power to control the conduct of proceedings where there has been a joinder of causes of action or of parties which may embarrass or delay the trial or is otherwise*



*inconvenient. In that situation, the court may exercise the power either by ordering separate trials of the claims in respect of two or more causes of action included in the same action or by confining the action to some of the causes of action and excluding the others or by ordering the plaintiff or plaintiffs to elect which cause of action is to be proceeded with or which plaintiff should proceed and which should not or by making such other order as may be expedient. (See Halsbury's Laws of England, Vol. 37, para 73.) Surely, when the matter rests with the discretion of the court, it could not be postulated that a suit suffering from such a defect is something that is barred by law. After all, it is the convenience of the trial that is relevant and as the Privy Council has observed in the decision noted earlier, the defendant may not even have an absolute right to contend that such a suit should not be proceeded with."*

15. In the present case also, it cannot be said that due to misjoinder of causes of action and misjoinder of parties, the plaint is liable to be rejected. The same hence has to be proceeded with. It is not a case where several causes of action have been united against same defendants jointly or the causes of action are such in which plaintiffs and defendants are both jointly interested. In fact, the causes of action against different defendants are different and are such in which different defendants are separately interested. Order 2 Rule 3 of the CPC also hence does not come into play. Though the fact situation of the present case is similar to the fact situation in the case of ***Remound Estate Pvt. Ltd. (Supra)*** but in the said judgment, decision of the Apex Court in ***Premlata Nahata (Supra)*** was neither cited nor considered. The said judgment provides a guideline as to the course of action which the Court may adopt in eventualities such as the one which has occurred in the present suit. One of the course illustrated is exercise of power by the Court to order separate trials of the claims in respect of two or more causes of action included in the same action.



16. In the suit, there are several sets of defendants with whom plaintiffs have entered into different agreement to sale in respect of their different shares in the entire suit land. They have paid consideration to these different sets of defendants separately and which is also different. While plaintiffs may bring one suit against the defendants but the same if is permitted to be continued with in its present form would certainly embarrass and delay the trial and would result in numerous complications in the matter. Thus, while the trial Court has correctly directed for separate trials but in directing the plaintiffs to institute separate suits in respect of remaining six agreements by choosing the present plaint to be in respect of one agreement, it has acted illegally and has gone against the very purpose of Order 2 Rule 6 of the CPC which is to prevent delay of trial. If plaintiffs institute six separate civil suits in respect of different sets of defendants, it would result in multiplicity of litigation and de novo trial would start in all those suits which would take much more considerable period of time. Thus, instead of directing separate civil suits to be filed by plaintiffs, the trial Court ought to have directed conducting separate trials in the present suit itself.

17. Thus, in the available facts of the case, in my opinion, interest of justice would be sub-served in directing and accordingly it is directed that the trial Court shall conduct separate trials in respect of each seven agreement to sale *vis-a-vis* the defendants with whom they have been entered into in this very suit itself. The plaint would be treated to be plaint filed in respect of all the agreement to sale individually and the written statements filed by different sets of defendants would be considered to be the written statement



in respect of only their agreement to sale. The plaintiffs would be required to value their claim individually in respect of each and every agreement to sale and would further be required to pay requisite Court fees thereupon. After conclusion of the separate trials in respect of each and every agreement to sale, the trial Court shall then pass final judgment in the matter.

18. Though an application bearing I.A. No.4522/2024 has been filed in this petition for impleadment but since such impleadment has not yet been permitted before the trial Court, the proposed intervenors cannot be permitted to intervene in this petition. Their impleadment application shall however be decided by the trial Court on its own merits.

19. With the aforesaid modification in the impugned order, the petition stands disposed off.

**(PRANAY VERMA)**  
**JUDGE**

Shilpa