

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 7th OF DECEMBER, 2022

MISC. PETITION No. 5944 of 2022

BETWEEN:-

REMOUND ESTATE PVT. LTD. THROUGH DIRECTOR SANJEEV LAUNKAD S/O SHRI VIJAY KUMAR LUNKAD, AGED ABOUT 52 YEARS, OCCUPATION: BUSINESS R/O 13 RACE COURSE ROAD INDORE AT PRESENT 33/2 NEW PALASIYA INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ROHINTON T. THANEVALA, ADVOCATE)

AND

- 1. MOHAMMAD SALEEM GHORI S/O ABDUL MAJEED GHORI R/O 103 NANDANVAN COLONY INDORE (MADHYA PRADESH)**
- 2. SMT. FIROZA W/O MOHAMMAD SALEEM GHORI OCCUPATION: NA R/O 103 NANDANVAN COLONY INDORE (MADHYA PRADESH)**
MOHAMMAD VASEEM GHORI S/O MOHAMMED SALEEM GHORI
- 3. OCCUPATION: NA 103, NANDANVAN COLONY INDORE (MADHYA PRADESH)**
MOHAMMAD FAHEEM GHORI S/O MOHAMMED SALEEM GHORI
- 4. OCCUPATION: NA R/O 103 NANDANVAN COLONY INDORE (MADHYA PRADESH)**
- 5. MOHAMMAD SHAVEJ GHORI S/O MOHAMMED SALEEM GHORI R/O 103 NANDANVAN COLONY INDORE (MADHYA PRADESH)**
- 6. SMT. SHUBINA D/O MOHAMMED SALEEM GHORI OCCUPATION: NA R/O 103 NANDANVAN COLONY INDORE (MADHYA PRADESH)**
- 7. BASANTILAL SINCE DECEASED THR LRS SMT. BABITA W/O SHRI SANJAY LAHOTI OCCUPATION: NA 2219 SUDAMA NAGAR SECTOR D**

INDORE (MADHYA PRADESH)

- BASANTILAL SINCE DECEASED THR LRS SMT. ASHA W/O SHRI**
8. **KRISHNAMURARI KAKANI 73/301 JAWAHAR MARG INDORE**
(MADHYA PRADESH)
- SARASWATI BAI W/O BASANTILAL GATTANI OCCUPATION: NA**
9. **NAVRATAN PRIDE 14 AC X SCHEME NO. 71 INDORE (MADHYA**
PRADESH)
10. **GIRISH S/O BASANTILAL GATTANI OCCUPATION: NA NAVRATAN**
PRIDE 14 AC X SCHEME NO. 71 INDORE (MADHYA PRADESH)
11. **SATISH S/O BASANTILAL GATTANI OCCUPATION: NA NAVRATAN**
PRIDE 14 AC X SCHEME NO. 71 INDORE (MADHYA PRADESH)
12. **THE STATE OF MADHYA PRADESH THROUGH DISTRICT**
COLLECTOR DHAR (MADHYA PRADESH)

.....RESPONDENTS

(RESPONDENT NO.1 BY SHRIBHARAT I. MEHTA, SENIOR ADVOCATE
ASSISTED BY SHRI JITENDRA BHARAT MEHTA, ADVOCATE)
(RESPONDENT NO.12 / STATE BY SHRI SHANTANU CHOURASIA, PANEL
LAWYER)

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

O R D E R

The petitioner/plaintiff has filed the present petition under Article 227 of the Constitution of India being aggrieved by the order dated 16.11.2022, whereby learned IV Additional District Judge, Dhar has directed to file separate suits against the defendants for specific performance of the contract and value them separately.

02. The petitioner, a company duly registered under the provisions of the Companies Act, 1956 agreed to purchase agricultural land of various survey numbers on 14.03.2005 with its respective owners (i.e. respondents No.1 to 11). According to the petitioner/plaintiff, all the

land mentioned in para – 5.2 of the writ petition is on a single map and the petitioner is interested to purchase the entire area of all the land as one chunk to start its industry. Respondents No.1 to 11, were also interested in selling the land jointly to the petitioner. The deal was finalized through middleman Saleem Ghori. The petitioner agreed to purchase the land @ Rs.3,18,000/- per hectare, accordingly paid Rs.1,03,00,000/- by various cheques and cash amount of Rs.75,00,000/- to Ghori Family.

03. Accordingly, respondents No.1 to 11 did not perform their part as per the terms of the contract. The petitioner / Company had filed a civil suit for the decree of specific performance against respondents No.1 to 11 by joining them as defendants in the said suit. Respondents No.1 to 5 filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1973 seeking rejection of the plaint on the grounds of limitation, misjoinder of the cause of action and misjoinder of parties etc. Vide order dated 16.11.2022, the learned IV Additional District Judge has held that each agreement constitutes an independent cause of action, hence, directed to file ten separate suits for each owner of the respective land. Hence, the present miscellaneous petition is before this Court.

04. Shri Thanevala, learned counsel for the petitioner submits that the petitioner with an interest to purchase a big area of land entered into an agreement to sell with the land owners i.e. respondents No.1 to 11 jointly in order to establish a dairy form. Even if one or two of the owner refuse the sale of the land, then the petitioner may not agree to purchase the other land as well. By way of alternate relief, the

petitioner / Company is seeking a refund of the amount. It is further submitted that possession of the land is with the petitioner. The cause of action and relief against all the respondents are identical, therefore, in order to avoid multiplicity of the proceedings, one suit has been filed against the defendants which are permissible under Order I Rule 3 of the CPC. In support of his contention, he has placed reliance upon a judgment delivered in the case of *Iswar Bhai C. Patel Alias Bachu Bhai Patel v/s Harihar Behera & Another* reported in (1999) 3 SCC 457, in which the Apex Court has held that the purpose of Order I Rule 3 of the CPC is to avoid the multiplicity of the suit. This rule to some extent deals with the joinder of the cause of action in as much as the plaintiff frames his suit, he impleads persons against whom he claims the cause of action. It has further been held that joinder of the cause of action has been provided for in Order II Rule 3 of the CPC. Learned counsel has also placed reliance upon a judgment delivered by the Nagpur High Court in the case of *Parashramsao & Others v/s Hiralal S/o Adku Patil* reported in AIR 1947 Nag 86, in which the Nagpur High Court has held that Order II Rule 6 of the CPC does not contemplate that plaintiff should be asked to file a separate suit.

05. Shri Mehta, learned Senior Counsel for the respondent submits that by consolidating all the defendants and causes of action in one suit, the plaintiff has paid the maximum amount of the court fee to the tune of Rs.1,50,000/- otherwise on the basis of valuation of the property in the agreement, each and every suit is liable to be valued and charged with *ad valorem* court fee. It is further submitted that on the basis of the valuation of the property and suit, the pecuniary jurisdiction of the trial

Court is also liable to be decided, therefore, if the petitioner is permitted to file a joint suit, then all the issue cannot be considered by the trial Court.

Appreciation and conclusion

06. For ready reference, Order I Rule 3 of CPC is reproduced below:-

“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.

3A. 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.”

07. The aforesaid provision of law provides that who may be joined as a defendant according to which all persons may be jointed in one suit where the 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 person, the common question of law or fact would arise in order to avoid multiplicity of the suit. In order to join any person as a defendant, it is required to be examined where the person is necessary party without whom no order can be made effectively or a proper party in whose absence an effective order can be passed by the Court.

08. Order I Rule 3A of the CPC gives power to the Court to order

separate trials, where the joinder of the defendant may embarrass or delay the trial. In this provision 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. This provision was inserted in the CPC by Act of 104 of 1976 w.e.f. 01.02.1977 i.e. prior to the judgment passed by the Nagpur Bench in the year 1946.

09. In the present case, the trial Court has observed that there are various issues which are required to be decided between the parties like limitation, court fee, valuation etc., therefore, in the interest of justice, separate suits are liable to be filed.

10. Even otherwise, it is the suit for specific performance of the contract, in which certain issues like continuous readiness and willingness by the parties or who have breached the contract are liable to be examined. There cannot be an omnibus allegation or generalized way of conduct between the seller and purchaser in different agreements to sale. The plaintiff entered into a separate agreement to sale with each landowners i.e. respondents No.1 to 11 in respect of the land, therefore, especially in the suit for specific performance of a contract, there cannot be a joinder of cause of action as well as the parties when every agreement to sale or its non-performance constitutes a separate cause of action.

11. In the case of *Ishwar Bhai C. Patel (supra)*, the plaintiff filed a suit for recovery of money against defendants No.1 and 2, where defendant No.2 gave money to the plaintiff from the account of defendant No.1, therefore, the plaintiff filed the suit against both the

defendants to recover the money. The trial Court has decreed the suit only against defendant No.2 and not against defendant No.1. In the said facts and circumstances of the case, the Apex Court has examined the provisions of Order I Rule 3 and Order II Rule 3 of the CPC. In this case, in respect of the agreement between the plaintiff and respondent No.1, defendants No.2 to 11 are neither necessary or the proper parties. The Apex Court in the case of *Anil Kumar Singh v/s Shivnath Mishra Alias Gadasa Guru reported in (1995) 2 SCC 147* has specifically held that Order I Rule 3 is not applicable to the suit for specific performance because admittedly, the respondent was not a party to the contract. The Apex Court has held that under Order I Rule 10(2) of the CPC, the Court may have the power to strike out the name of parties improperly joined or add the parties on an application, but the condition precedent is that Court must be satisfied that presence of parties would not be necessary in order to enable the Court to effectually and completely adjudicate upon the question involved in the suit.

12. In my considered opinion, the learned trial Court has not committed any error of law by directing the petitioner to file separate suits against respondents No.1 to 11.

In view of the above, the Miscellaneous Petition stands dismissed. The order passed by this Court shall be complied with within a period of 30 days from the date of receipt of certified copy of the order.

(VIVEK RUSIA)
J U D G E