

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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 2nd OF MAY, 2023

CIVIL REVISION No. 288 of 2023

BETWEEN:-

- 1. MANORAMA W/O LATE CHTURBIHARI NIGAM, AGED ABOUT 80 YEARS, OCCUPATION: HOUSEHOLD 77 G/H SCHEME NO. 54 DISTRICT INDORE (MADHYA PRADESH)**
- 2. SMT. MAMTA W/O SHRI AVINSH KANUNGO, AGED ABOUT 55 YEARS, OCCUPATION: NAMALUM 77, G/H, SCHEME NO. 54, INDORE (MADHYA PRADESH)**

.....PETITIONER

(BY MS. PRANJALI PANDYA, ADVOCATE)

AND

- 1. SUDHA W/O SHRI NARENDRA SINGH BAIS, AGED ABOUT 53 YEARS, 5C BAKHATAR RAM NAGAR, DISTRICT INDORE (MADHYA PRADESH)**
- 2. MUKESH S/O LATE SHRI CHATURBIHARI NIGAM 77, G/H, SCHEME NO. 54, INDORE (MADHYA PRADESH)**
- 3. RAJENDRA KUMAR S/O SHRI VISHNUPRASAD SHUKLA 94, GANGANGA MAINROAD, INDORE (MADHYA PRADESH)**
- 4. MADHYA PRADESH THROUGH**

**JILADHEESH KARYALAY PRASHNIK
SANKUL, MOTI TABLEA, INDORE
(MADHYA PRADESH)**

.....RESPONDENTS

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

ORDER

1] This civil revision has been filed by the petitioners/defendants no.1 & 2 under Section 115 of the C.P.C. assailing the order dated 23.3.2023 passed by the 26th Additional District Judge, Indore (M.P.) in RCS No.101/2016 whereby, the application filed by the petitioner/defendant No.1 under Order 7 Rule 11 of the C.P.C. has been rejected.

2] In brief, the facts of the case are that the civil suit has been filed by the respondent No.1 for cancellation of the sale deed and permanent injunction of the suit property against the petitioners and defendants No.2 to 4.

3] In the aforesaid civil suit, the defendant no.1 & 2/petitioners have also filed their written statement and it is also contended in their written statement that the petitioners have not sought the relief of possession of the property despite the fact that the suit property is in possession of the defendant No.4 and, hence, the suit is liable to be rejected. Thus, a separate application to this effect under Order 7 Rule

11 of the CPC was also filed, citing Section 34 of the Specific Relief Act, 1963.

4] The plaintiff filed her reply to the aforesaid application contending that the suit property is a joint property hence, the plaintiff has filed the suit that the plaintiff is an equal share holder of the suit property at par with the defendants No.1 to 12. It is also stated that the suit is at the stage of recording the plaintiff's evidence and only to further delay the trial, the application has been filed, which is liable to be dismissed.

5] The aforesaid application has been rejected by the learned Judge of the trial court vide its impugned order holding that the suit has been filed by the plaintiff with pleadings that the plaintiff is also entitled to the equal share in the property along with the defendants No.1 to 12 and the property is a joint property as there is no partition and, in such circumstances, there is no need for the plaintiff to seek the possession of the property. The court has also held that the application under Order 7 Rule 11 of the CPC is to be decided only on the averments made in the plaint and on this ground also, no case for interference is made out.

6] Contending that the finding recorded by the learned Judge of the civil court is erroneous, Ms.Pandya, learned counsel for the petitioners has also relied upon the decisions rendered by the Supreme Court in the case of *Shakuntala vs. Lt. Col. Mukhtiar Singh & others* reported as 2008(11) SCC 42 and *Gian Chand vs. Krishen*

Singh and another reported as 1978 AIR (Jammu and Kashmir) 16 .

7] Heard. On due consideration of the submissions and on perusal of the documents filed on record, it is found that so far as the civil suit is concerned, the plaintiff has pleaded that she and the other defendants are the close relatives and belong to the same family, and they are entitled to the equal share in the family property. The plaintiff has also sought the cancellation of the sale deed, which has been allegedly executed by the defendants no.1 to 3 in favour of the defendant no.4 without there being any partition in the family property. At this juncture, this court may fruitfully use the decision rendered by the Supreme Court in the case of *Md. Mohammad Ali v. Jagadish Kalita, (2004) 1 SCC 271, at page 277* : the relevant para of the same reads as under:-

“25. Possession of a property belonging to several co-sharers by one co-sharer, it is trite, shall be deemed that he possesses the property on behalf of the other co-sharers unless there has been a clear ouster by denying the title of other co-sharers and mutation in the revenue records in the name of one co-sharer would not amount to ouster unless there is a clear declaration that the title of the other co-sharers was denied and disputed. No such finding has been arrived at by the High Court.”

(emphasis supplied)

8] In view of the aforesaid dictum of the Supreme Court, it is apparent that in a suit for partition, when the property belongs to one

co-sharer, it shall be deemed to be held by that co-sharer on behalf of the other co-sharers, and in such circumstances, in the considered opinion of this court, it is not required by the plaintiff-co-sharer to specifically claim possession as well, and thus, the suit shall not be barred under proviso to u/s.34 of the Specific Relief Act, 1963.

Even otherwise, it found that in the plaint, the plaintiff has clearly averred that the property is a joint family property which has been sold without there being any partition, thus, on the face of it, plaintiff's suit cannot be rejected merely on the basis of the plaint averments. Hence also, at this stage the suit cannot be rejected under Or.7 rule 11 of CPC.

9] So far as the decisions relied upon by the counsel for the petitioners are concerned, in both the cases, the judgments have been delivered after the full trial and not on an application filed under Order 7 Rule 11 of the CPC, thus, have no application in the facts and circumstances of the case.

10] In such facts and circumstances of the case, this Court is of considered opinion that no illegality or jurisdictional error has been committed by the learned Judge of the civil court in rejecting the application filed by the petitioner No.1 under Order 7 Rule 11 of the CPC.

11] Resultantly, the petition being devoid of merit is hereby

dismissed. However, considering the fact that the civil suit itself is filed in the year 2016, the learned Judge of the civil court is requested to expedite the matter and conclude the same preferably within a period of one year as it is also found that various amendments have been made in the pleadings and appears that the matter is being dragged for one reason or other by the defendants.

Certified copy, as per rules.

**(SUBHODH ABHYANKAR)
JUDGE**

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