

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

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 7th OF FEBRUARY, 2024

CIVIL REVISION No. 487 of 2023

BETWEEN:-

1. JAGDISH S/O KANHAIYALALJI GARG 368 M.G. ROAD, MALHARGANJ, INDORE. PRESENT ADD:- 40-41 CHHATRAPATI NAGAR, AIRPORT ROAD INDORE (MADHYA PRADESH)
2. SMT. RITU W/O ROSHAN PORWAL, AGED ABOUT 18 YEARS, JOY BUILDERS COLONY, INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ASHOK KUMAR SETHI, SENIOR ADVOCATE ASSISTED BY SHRI HARISH JOSHI, ADVOCATE)

AND

1. M/S SIDDHI VINAYAK DEVELOPERS 18 JAY BUILDERS COLONY, INDORE (MADHYA PRADESH)
2. KAMAL JAIN S/O GENDA LAL JI JAIN FLAT NO. 102, RANI SATI APARTMENT, AHILYAMATA COLONY, INDORE (MADHYA PRADESH)
3. SMT. JYOTI BALA GARG 368, M.G. ROAD, BADA GANPATAI ROAD, MALHARGANJ, INDORE (MADHYA PRADESH)
4. STATE OF MADHYA PRADESH THROUGH COLLECTOR DIST. INDORE (MADHYA PRADESH)
5. M/S JRG REALTY (THROUGH PARTNER, AS STATED IN THE PLAINT) THROUGH PARTNER GHANSHYAM S/O HARIKISHANJI GOYAL 304 MILIND MANOR, 2, RNT MARG, INDORE (MADHYA PRADESH)
6. GHANSHYAM S/O HARIKISHANJI GOYAL 56, KAILASH MARG, MALHARGANJ INDORE (MADHYA PRADESH)

.....RESPONDENTS

(RESPONDENTS NO. 5 & 6 BY SHRI SAMEER ANANT ATHAWALE AND SHRI ADITYA GOYAL, ADVOCATES)

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

O R D E R

The petitioners / defendants No.1 & 2 have filed this Civil Revision under Section 115 of the Code of Civil Procedure, 1908 being aggrieved by the order dated 06.07.2023 passed by the XXVI District Judge, Indore in Civil Suit No.1380/2022, whereby the application filed under Order XXX Rule 1 of the CPC has been rejected.

02. Draped in brevity, the relevant facts are that respondents No.5 & 6 have filed a suit for declaration and permanent injunction against petitioners and respondents No.1 to 4 by impleading them as defendants No.1 to 6. The plaintiffs have valued the suit to Rs.12,01,80,880/-. The plaintiffs are seeking decree of declaration that the sale deed dated 21.04.2022 be declared as void and defendants No.3, 4 & 5 be restrained to alienate the suit property.

03. Plaintiff No.1 is a partnership Firm, in which plaintiff No.2 and defendants No.1 & 2 are partners which was incorporated on 20.09.2010.

04. According to the plaintiffs, the plaintiff / Firm purchased the land as mentioned in paragraph – 5 of the plaint. The defendants No.1 & 2 without the consent of the plaintiffs have sold the land by way of registered sale deed which gave cause of action for filing the suit.

05. The defendants appeared in the suit and filed an application under Order XXX Rule 1 of the CPC that suit in the name of Firm can be filed by two or more partners, therefore, the suit filed in the name of Firm by one partner i.e. plaintiff No.2 is not maintainable which is liable to be dismissed.

06. The plaintiffs filed a reply opposing the application on the

ground that similar objection could have raised in an application filed under Order VII Rule 11 of the CPC, hence, this application is barred by way of constructive *res judicata*. It is further submitted that even one partner can file a suit against remaining partners as held by the High Court of Kerela in the case of ***Thomas v/s George & Another reported in AIR 1973 Ker 94.***

07. Vide order dated 06.07.2023, the learned District Judge dismissed the application on the ground that by co-joint reading of provisions of Section 69 of the Indian Partnership Act, 1932 and Order XXX Rule 1 of the CPC the registered Firm can file a suit through one partner. Since plaintiff No.1 is a registered Firm, therefore, plaintiff No.2 is having an authority to file the suit. Being aggrieved by the said order, present civil revision is filed.

08. Shri A.K. Sethi, learned Senior Counsel for the petitioners / defendants submits that there cannot be two interpretation of Order XXX Rule 1 of the CPC which mandates that suit can be filed in the name of Firm by two or more partners and Section 69 of the Indian Partnership Act does not apply which has unnecessarily been referred by the learned Court.

09. Shri Athawale, learned counsel for respondents No.5 & 6 submits that Order XXX Rule 1 of the CPC is only enabling provision but not a prohibitory in nature, therefore, there is no prohibition of filing the suit by one partner in the name of Firm against other partners. In this case the plaintiffs are challenging the sale deed executed by remaining two partners, therefore, the suit is maintainable at the instance of one partner. In support of his contention, he is placing reliance upon a several judgments delivered in the cases of ***Bhadreswar Coal Supply Co. v/s Satis Chandra Nandi & Co. & Others reported in AIR 1936***

Cal 353, Purushottam Umedbhai & Co. v/s Manilal & Sons reported in AIR 1961 SC 325, Ramlal Kanhaiyalal Somani v/s Ajit Kumar Chatterjee & Others reported in AIR 1973 Cal 372, Shanti Devi Sharma & Others v/s Radheshyam Palod & Others reported in 2000 (2) M.P.L.J. 331 and Dinesh Narayan Jha & Others v/s The State of Bihar & Others (MANU/BH/793/2010).

10. I have heard Shri A.K. Sethi, learned Senior Counsel for the petitioners and Shri Sameer Athawale & Shri Aditya Goya, learned counsel for respondents No.5 & 6 who are the contenting parties at length and perused the record.

11. Order XXX Rule 1 of the CPC is reproduced below:-

“ORDER XXX

**SUITS BY OR AGAINST FIRMS AND PERSONS
CARRYING ON BUSINESS IN THE NAMES OTHER
THAN THEIR OWN**

1. **Suing of partners in name of firm.**—(1) Any two or more persons claiming or being liable as partners and carrying on business in, 1[India] may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice such pleading or other document is signed, verified or certified by any one of such persons.”

[Emphasis Supplied]

12. In this case, the sale deed in dispute is in favour of the defendants in which the Firm is vendor and the same being plaintiff No.1 is Firm is seeking the declaration that the sale deed be declared as void which is not permissible. It is clear from the plain language of Rule

1 of Order XXX of the CPC that any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm of which such persons were partners at the time of the accruing of the cause of action.

13. In view of the aforesaid provisions of law, if plaintiff No.2, being a partner wants to sue the remaining two partners, i.e. defendants No.1 & 2, he has to sue them in the name of Firm. The Firm cannot sue or to be sued through one partner, meaning thereby, two or more partners can represent the Firm, not one partner. In this case, when the sale deed is being challenged by plaintiff No.2 in which the vendor is the Firm through defendants No.1 & 2, therefore, defendants No.1 & 2 are liable to be sued in the name of Firm by plaintiff No.2 alone.

14. In view of the above discussion, the impugned order dated 06.07.2023 is hereby set aside. The name of plaintiff No.1 be deleted and transposed as defendant No.7 and the Firm shall be represented by defendants No.1 & 2.

15. With the aforesaid, Civil Revision stands allowed.

(VIVEK RUSIA)
J U D G E