

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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 10th OF APRIL, 2023

MISC. PETITION No. 1643 of 2023

BETWEEN:-

**MANOJ SINGH S/O SHRI RAMDEVSINGH
GAUTAM, AGED ABOUT 48 YEARS,
OCCUPATION: AGRICLTURIST/ BUSINESS
VILLAGE LEBAD, TAHSIL AND DISTRICT DHAR
(MADHYA PRADESH)**

.....PETITIONER

(SHRI NITIN PHADKE, ADVOCATE)

AND

- 1. LAXMANSINGH DECEASED THROUGH LRS.
MADHUKANTA W/O LAXMANSINGH RAJPUT
VILLAGE TIRLA, TAHSIL AND DISTRICT
DHAR (MADHYA PRADESH)**
- 2. LAXMANSINGH DECEASED THROUGH LRS.
SHAILENDRASINGH S/O LAXMANSINGH
RAJPUT VILLAGE TIRLA TEHSIL AND
DISTRICT DHAR (MADHYA PRADESH)**
- 3. LAXMANSINGH DECEASED THROUGH LRS.
HEMLATA S/O LAXMANSINGH RAJPUT
VILLAGE TIRLA TEHSIL AND DISTRICT
DHAR (MADHYA PRADESH)**
- 4. LAXMANSINGH DECEASED THROUGH LRS.
PINKI @ ARCHANA D/O LAXMANSINGH
RAJPUT VILLAGE TIRLA TEHSIL AND
DISTRICT DHAR (MADHYA PRADESH)**
- 5. STATE OF MADHYA PRADESH THROUGH
THE COLLECTOR DHAR(MADHYA**

PRADESH)

.....RESPONDENTS

*(SHRI MOHAN SHARMA, LEARNED COUNSEL FOR THE RESPONDENTS
[CAVEATOR].*

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

ORDER

01] This Miscellaneous Petition has been filed by the petitioner/plaintiff under Article 227 of the Constitution of India against the order dated 25.2.2023, passed by the Second Civil Judge, Class-I, Dhar, District-Dhar (M.P.) in C.S. No.67-A/2016, whereby, the petitioner/plaintiff's application filed under Order 6 Rule 17 of the C.P.C. has been rejected on the ground of lack of due diligence shown by the plaintiff.

02] In brief, the facts of the case are that the plaintiff has filed a suit for specific performance of contract and permanent injunction against the respondent/defendant in which, the plaintiff's evidence has already been closed and the defendant's evidence is yet to commence. At this stage of the proceedings, an application under Order 6 Rule 17 of the CPC has been filed by the plaintiff contending that since he has not sought any relief for possession of the suit land, hence, in order to avoid any technical objections subsequently, he is seeking the said relief by way of amendment.

3] The aforesaid application has been dismissed as aforesaid on the ground of lack of due diligence, hence, this petition.

04] Counsel for the plaintiff has submitted that the learned Judge of the civil court has erred in not taking into account the provisions of Section 22 of the Specific Relief Act, 1963 the sub-section (2) of which, specifically provides that such relief of possession can be sought by the plaintiff at any stage of the proceedings and the court may allow the plaintiff to amend the plaint on such terms, which may appear just.

05] To support his submissions, Shri Phadke has relied upon the recent decision of the Supreme Court in the case of *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another* [Civil Appeal No.5909 of 2022 (arising out of SLP (C) 22443 of 2019) dated 01/09/2022]. The relevant para 58 of the judgment reads as under :-

“58. Section 22 has a non-obstante provision which overrides the CPC. A plaintiff who claims specific performance of a contract for the transfer of immovable property, may in an appropriate case ask for possession, partition and separate possession of the property, in addition to specific performance. The plaintiff may also claim any other relief including the refund of earnest money or deposit paid, in case the claim for specific performance is refused. Corresponding to the provisions of sub-section (5) of Section 21, sub-section (2) of Section 22 stipulates that such relief cannot be granted by the court unless it has been specifically claimed. However, the proviso

requires that the court shall at any stage of the proceedings allow the plaintiff to amend the plaint to claim such relief where it has not been originally claimed on such terms which may appear just.”

06] On the other hand, Shri Mohan Sharma, learned counsel appearing for the respondents (Caveator) has opposed the prayer and it is submitted that in the garb of the amendments, the petitioner/plaintiff is also seeking other amendment as well by describing the boundaries of the disputed lands which have not been mentioned either in the agreement or in the plaint. Hence, the aforesaid relief for amendment in the plaint can not be allowed. It is also submitted that the plaintiff has already been cross-examined in respect of the boundaries of the suit land and which ground has also been raised by the defendant in his reply to the application filed under Order 6 Rule 17 of the CPC. Thus, it is submitted that the application having been filed after a delay of around seven years cannot be allowed.

07] Heard the learned counsel for the parties and also perused the record.

08] On perusal of the application filed by the plaintiff under Order 6 Rule 17 of the CPC, it is found that by way of the aforesaid application, the plaintiff has sought to add not only the possession of the suit land, but also the boundaries of the suit land in the plaint.

09] A bare perusal of Section 22 of the Specific Relief Act, 1963 and the decision rendered by the Supreme Court in the case of *Life*

Insurance Corporation of India (supra), this Court is of the considered opinion that so far as the relief of the possession of the suit land is concerned, in a suit of specific performance of contract, it can certainly be allowed at any stage of the proceedings. Thus,, the refusal of the amendment application so far as it relates to relief in respect of the possession of the property is concerned, the learned Judge of the trial court has erred in law in refusing the same. However, this Court has reservations in allowing the amendment application, so far as it relates to describing the boundaries of the suit land is concerned, as apparently, the suit itself was filed in the year 2016, in which the boundaries of the suit land have not been mentioned and although the agreement, the specific performance of which has been sought, has not been filed on record, however, the counsel for the plaintiff has not disputed the fact that in the agreement also, there is no description of boundaries of the suit land. Thus, this Court is of the considered opinion that the amendment application so far as it relates to amending the plaint in respect of the boundaries of the suit land is concerned, cannot be allowed, as the same runs contrary to the provisions of Order 6 Rule 17 of the CPC, the proviso of which reads as under :-

"Provided that no application for amendment shall be allowed after the trial has commenced, unless Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

10] In the present case, admittedly, the issue has been framed on 9.1.2017 and thereafter the examination-in-Chief of the plaintiff's witness was recorded on 29.7.2018, which is the date of commencement of the trial.

11] In view of the same, the petition is **partly allowed** and it is directed that the petitioner/plaintiff's application filed under Order 6 Rule 17 of the CPC shall stand allowed, so far as it relates to possession of the suit land is concerned. However, the amendment in respect of the boundaries of the suit land is concerned, the same is hereby rejected. The trial court shall allow the plaintiff' to carry out the said amendments within a ten days' time.

12] Needless to say that, this Court has not reflected upon the merits of the case, and the learned Judge of the trial court is requested to decide the issues on the basis of the evidence adduced by the parties.

Certified copy, as per rules.

(**SUBHODH ABHYANKAR**)
JUDGE