

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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

**th
ON THE 22 OF MARCH, 2024**

MISC. PETITION No. 1689 of 2023

BETWEEN:-

**RIYAZUDDIN S/O RAISUDDIN, AGED ABOUT 33 YEARS,
OCCUPATION: AGRICULTURE R/O CHOTA BAZAR
KAYTHA TARANA DISTT. UJJAIN (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI HARISH CHANDRA TRIPATHI, ADVOCATE)

AND

- 1. NISARUDDIN @ ANTIM LALA S/O NIYAZUDDIN KAJI,
AGED ABOUT 40 YEARS, R/O CHOTA BAZAR KAYTHA
TEHSIL TARANA DISTT. UJJAIN (MADHYA PRADESH)**
- 2. BHURA KAJI S/O NIYAJUDEEN KAJI, AGED ABOUT 35
YEARS, OCCUPATION: PRIVATE JOB CHHOTA
BAZAR, KAYTHA TEH. TARANA, DIST. UJJAIN
(MADHYA PRADESH)**
- 3. ANNU KAJI S/O MO. HANEEF KAJI, AGED ABOUT 33
YEARS, OCCUPATION: NONE CHHOTA BAZAR
KAYTHA TEH. TARANA, DIST. UJJAIN (MADHYA
PRADESH)**
- 4. RAFIQ S/O MOHAMMAD HANEEF, AGED ABOUT 35
YEARS, OCCUPATION: PRIVATE JOB CHHOTA BAZAR,
KAYTHA TEH. TARANA, DIST. UJJAIN (MADHYA
PRADESH)**
- 5. M.P. SHASAN THROUGH JILADHEESH MAHODAY
UJJAIN DISTT. UJJAIN (MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI SHRI A S GARG, SENIOR ADVOCATE WITH SHRI JITENDRA
SHUKLA, ADVOCATE FOR RESPONDENTS NO.1 TO 4)***

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Reserved on : 15.02.2024

Delivered on : 22.03.2024

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

ORDER

01] This petition has been filed by the petitioner/plaintiff under Article 227 of the Constitution of India, against the order dated 17.01.2023, passed by the Civil Judge, Senior Division, Ujjain in RCSA No.28-A/2017 whereby, the application filed by the petitioner under Order 6 Rule 17 of the C.P.C., 1908 for amendment in the plaint, has been rejected.

02] In brief, the facts of the case are that the aforesaid suit was filed on 15.7.2017, by the plaintiff for injunction only. The suit was contested by the respondents/defendants, and after the evidence was recorded, the learned Judge of the trial court has passed the judgment dated 18.7.2019, and dismissed the suit. Against the aforesaid dismissal, the plaintiff preferred an appeal before the District Appellate Court along with an application under **Order 41 Rule 27** of the C.P.C. for placing on record the additional documents. The aforesaid application was allowed by the District Appellate Court vide its order dated 23.3.2021, and remanded the matter back to the trial court holding that certain issues have not been framed by the trial court which ought to have been framed, and thus, directing the trial court to decide the matter on further additional four issues, and it was also directed that if the trial court so requires, other issues may also be

framed and the matter may be decided in accordance with law. When the matter went back to the trial court, the plaintiff filed an application under Order 6 Rule 17 of the C.P.C. seeking amendment of the plaint in respect of the documents, which were filed by him in the application under Order 41 Rule 27 of the C.P.C., which was already allowed by the District Appellate Court. However, the aforesaid application has been rejected by the learned Judge of trial court by the impugned order dated 17.01.2023, holding that if the aforesaid application is allowed it would change the nature of the suit, and also on the ground that even though the appellate court has allowed the application filed under Or.41 r.27 of CPC, but after the remand, the application for amendment has to be decided on the general rules of amendment applications, and since the plaintiff had the knowledge of the aforesaid documents, he could have carried out the said amendment earlier also, and in such circumstances, it was held that the application being filed after undue delay, cannot be allowed, as the defendants are likely to be prejudiced by the aforesaid amendments.

03] Shri Harish Chandra Tripathi, learned counsel for the petitioner has submitted that the aforesaid documents regarding which the petitioner's application was already allowed by the learned District Appellate Court under Order 41 Rule 27 of the CPC, were required to be pleaded in the plaint itself, otherwise, the application which has been allowed by the District Appellate Court would not have any meaning at all. It is submitted that the learned Judge of trial court has

erred in not taking into account the fact that the District Appellate Court has remanded the matter back with a direction that certain issues may be framed, and certain additional issues may also be framed as the Civil court finds expedient, and the matter was directed to be decided in accordance with law. In such circumstances, it is submitted that the application should have been allowed and should not have been rejected.

04] Learned counsel for the respondent, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out as the learned Judge of the trial court has rightly rejected the application on the principles enshrined under Order 6 Rule 17 of CPC and if the amendment is allowed to be carried out, it would cause serious prejudice to the respondent, and also would change the nature of the suit. Thus, it is submitted that the petition be dismissed.

05] Counsel for the respondent has relied on the decision rendered by this Court in the case of ***Rajaram vs. Vithabai and others*** reported as 1990 J LJ 7 to submit that the court to which the case has been remanded back has to comply with the order of remand in its letter and spirit, and acting contrary to the order of remand is contrary to law and in that case, the amendment was not allowed.

06] Heard the counsel for the parties and perused the record.

07] On due consideration of the rival submissions and on perusal of the documents filed on record, it is found that the learned Judge of the District Appellate Court while disposing of the appeal vide its order dated 23.03.2021, and remanding back the matter to the civil court,

has made the following observations (relevant para 16,17 and 19):-

"16. विद्वान विचारण न्यायालय द्वारा मात्र तीन वाद प्रश्न विरचित किये गए हैं, जो इस प्रकार हैं:-

1. क्या ग्राम कायथा, तहसील तराना, जिला उज्जैन में स्थित वादग्रस्त भूमि सर्वे नंबर-669/मीन 4 रकबा 0.190 पर वादी का आधिपत्य है?

2. क्या प्रतिवादी क्रमांक -1 लगायत 4 वादी के उक्त आधिपत्य में अवैध रूप से हस्तक्षेप करने के लिये प्रयासरत है

3. सहायता एवं व्यय विद्वान विचारण न्यायालय द्वारा निम्न वाद प्रश्न

1."क्या वादग्रस्त भूमि पैतृक सम्पत्ति है?"

2."क्या वादग्रस्त भूमि का बंटवारा नहीं हुआ है?"

3."क्या वादी का वाद घोषणा एवं बंटवारा की सहायता चाहे बिना प्रचलन योग्य नहीं है?"

4."क्या वादग्रस्त भूमि के विक्रेता ने फर्जी व असत्य विक्रय-पत्र का निष्पादन किया है?"

बनाकर उभयपक्ष को साक्ष्य एवं सुनवाई का अवसर प्रदान नहीं किया गया है। ऐसी स्थिति में विद्वान विचारण न्यायालय द्वारा घोषित निर्णय एवं जयपत्र विधि संगत नहीं है।

17. उपरोक्त विवेचना के आधार पर अपीलार्थी/वादी की ओर से प्रस्तुत अपील स्वीकार करते हुए विद्वान विचारण न्यायालय का निर्णय एवं जयपत्र निरस्त किया जाता है तथा प्रकरण पुनः प्रेषित (रिमाण्ड) कर यह निर्देशित किया जाता है कि विद्वान विचारण न्यायालय उभयपक्ष के अभिवचन के आधार पर ऊपर उल्लेखित वाद प्रश्न एवं अन्य कोई वाद प्रश्न, जो प्रकरण के न्यायिक निराकरण के लिये आवश्यक हो, को विरचित कर उभयपक्ष को विधि अनुसार सुनवाई एवं साक्ष्य का अवसर प्रदान कर प्रकरण का समुचित निराकरण करें।

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19. अपीलार्थी/ वादी की अपील स्वीकार की गई है। विद्वान विचारण न्यायालय का निर्णय एवं जयत्र निरस्त कर प्रकरण पुनः प्रेषित (रिमाण्ड) कर उभयपक्ष को विधि अनुसार सुनवाई का अवसर देकर प्रकरण के निराकरण का निर्देश विद्वान विचारण न्यायालय को दिया गया है। ऐसी स्थिति में न्यायालय फीस अधिनियम, 1870 की धारा 13 के अनुसार अपीलार्थी अपील के ज्ञापन पर संदत्त न्यायालय फीस नियमानुसार वापस प्राप्त करने का अधिकारी है। अपीलार्थी द्वारा संदत्त फीस का प्रमाण-पत्र अपीलार्थी को प्रदान किया जावे।"

08] So far as the order observations made in the aforesaid order which relates to the application filed under Order 41 Rule 27 of the C.P.C. are concerned, para 11 of the same reads as under:-

“11. प्रकरण का अवलोकन किया गया। वादी ने वादग्रस्त भूमि का स्वामी एवं आधिपत्यधारी होना बताकर प्रतिवादी क्रमांक - 1 लगायत 4 के विरुद्ध निषेधाज्ञा चाही है। प्रतिवादीगण की ओर से प्रस्तुत उत्तर में विक्रेता द्वारा वादी को फर्जी तरीके से भूमि विक्रय किया जाना बताया है। विक्रेता का स्वतंत्र आधिपत्य भी नहीं होना बताया है। वादग्रस्त भूमि को शामिलती भूमि होना बताया गया है। वादी द्वारा करायी गई रजिस्ट्री को प्रभाव शून्य होना अभिवचन में बताया है, जिसके संबंध में वाद प्रश्न विरचित नहीं है। प्रस्तुत दस्तावेज प्रत्यर्थीगण ने अपीलार्थी के पिता के पास वर्षों से होना बताया है। वादग्रस्त भूमि शामिलती थी या बंटवारा हो चुका था, उक्त संबंध में वाद प्रश्न विरचित नहीं किया गया है। प्रत्यर्थीगण ने वादी के आधिपत्य में दस्तावेज रहते हुए प्रस्तुत करना नहीं बताया है। ऐसी स्थिति में प्रस्तुत दस्तावेज वाद विचारण के दौरान वादी के आधिपत्य में नहीं होना माना जाता है। अपीलार्थी द्वारा प्रस्तुत आवेदन -पत्र अंतर्गत आदेश 41 नियम 27 सी.पी.सी. स्वीकार योग्य होने से स्वीकार किया जाकर प्रस्तुत दस्तावेज अभिलेख पर लिये जाते हैं।”

09] A close scrutiny of the aforesaid order of the District Appellate Court reveals that it has opined that the documents produced by the petitioner/plaintiff in the appeal for the first time under Order 47 Rule 27 of the CPC were not in possession of the petitioner during the trial. In such circumstances, this Court is of the considered opinion that the application filed by the petitioner/plaintiff under Order 6 Rule 17 of the CPC for amendment in the plaint in respect of the aforesaid documents ought to have been allowed. It is also found that the plaintiff has not sought any amendment in the relief clause of the plaint. Thus, it cannot be said that the aforesaid amendment would change the nature of the suit itself.

10] The learned Judge of the trial court has rejected the application on the general principles of deciding application under Order 6 Rule 17 of the CPC, and has held that since the application for amendment has been filed after undue delay, the same cannot be allowed, which finding runs contrary to the order passed by the district appellate court as aforesaid, in which, the Court has recorded the finding that the aforesaid documents were not in possession of the petitioner/plaintiff during the trial. In such circumstances, the decision relied upon by the respondents in the case of **Rajaram** (supra) would not be of any avail to them. On the contrary, it supports the petitioner's case. The relevant part of para 5 of the aforesaid decision in the case of Rajaram (supra), reads as under:-

“5It is also settled that the Court, to which the case is remanded back, has to comply with the order of remand and any action not in compliance with the order of remand or acting contrary to the order of remand, is contrary to law. After remand, the jurisdiction of the lower Court depends upon the terms of the order of remand. Even the Court has no jurisdiction to entertain an application for allowing an amendment in the plaint if it is not directed in the order of remand. See Rameshwar Dayal Khandelwal v. Dr. Bhagwandas[4], Shambhulal v. Union of India and another [5] and Rukhmanand v. Dinbandhu and others [6].....”

(emphasis supplied)

11] In the aforesaid case also, this Court has held that after remand, the jurisdiction of the lower Court depends upon the terms of the order of remand, and this Court has directed the trial court to frame additional issues, if any, necessary and to decide the same in accordance with law, thus, merely if the Appellate Court has not

specifically directed to the trial court to entertain an application for amendment, it cannot be inferred that the Appellate Court had restricted the same. As already observed, it has been held by the appellate court that the documents which have been filed by the petitioner/plaintiff under Order 41 Rule 27 of the C.P.C., were not available with the petitioner/plaintiff during the trial. In such circumstances, if the petitioner/plaintiff is not allowed to incorporate the aforesaid documents in the body of the plaint, the order on the application under Order 41 Rule 27 of the CPC, which was allowed by the district appellate court would become otiose, and that cannot be the intention of the District Appellate Court.

12] In view of the same, the petition deserves to be and is hereby allowed and the impugned order dated 17.01.2023(Annexure P/1) is hereby set aside. Resultantly, the application filed by the petitioner under Order 6 Rule 17 of the CPC is allowed and learned Judge of the trial court is requested to allow the petitioner/plaintiff to carry out the amendments and proceed further, in accordance with law.

(SUBODH ABHYANKAR)

J U D G E