

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

ON THE 3rd OF JULY, 2023

MISC. PETITION No. 55 of 2023

BETWEEN:-

**BHANWARBAI W/O KACHRRULAL BALAI,
1. AGED ABOUT 67 YEARS, OCCUPATION:
AGRICUTLURE GRAM DHATRAVDA, TEH. AND
DISTT. UJJAIN (MADHYA PRADESH)**

**KACHRULAL S/O LAXMANJI BALAI, AGED
2. ABOUT 72 YEARS, OCCUPATION: AGRICUTLURE
GRAM DHATRAVDA, TEHSIL AND DISTRICT
UJJAIN (MADHYA PRADESH)**

.....PETITIONERS

***(SHRI A.S. GARG, SENIOR ADVOCATE WITH SHRI JITENDRA SHUKLA,
ADVOCATE FOR THE PETITIONER)***

AND

**LEELABAI W/O LATE RAMCHANDRA ANJANA,
1. AGED ABOUT 72 YEARS, OCCUPATION:
AGRICULTURE GRAM JAVASIYA KUMAR, TEH.
AND DISTT. UJJAIN (MADHYA PRADESH)**

**ISHWAR S/O LATE RAMCHANDRA ANJANA,
2. AGED ABOUT 38 YEARS, OCCUPATION:
AGRICULTURE GRAM JAVASIYA KUMAR,
TEHSIL AND DISTRICT UJJAIN (MADHYA
PRADESH)**

**3. MAYABAI W/O KAMAL, AGED ABOUT 30 YEARS,
OCCUPATION: AGRICULTURE GRAM
DARIYAKHEDI, TEHSIL AND DISTRICT UJJAIN
(MADHYA PRADESH)**

4. **THE STATE OF M.P. THROUGH COLLECTOR
INDORE (MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI VAIBHAV BHAGWAT, GOVT. ADVOCATE FOR THE RESPONDENT
NO.4/STATE)**

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

ORDER

1. None for the respondents No. 1 to 3 despite service of notice, and on the last date of hearing also this Court had granted one last opportunity to the respondents to address this Court but today also none has appeared. Hence, the matter is heard finally.

2. This petition has been filed under Article 227 of the Constitution of India by the **petitioner/defendant** against the order dated 21/12/2022, passed in Case No.RCSA/37-A/19 by XI Civil Judge Class-II, Ujjain, M.P. whereby the application filed by the respondents no.1 to3/plaintiffs under Order 6 Rule 17 of the CPC for amendment in relief clause has been allowed.

3. In brief, the facts of the case are that a suit titled as, “for declaration and possession” has been filed by the plaintiffs against the defendant in which the written statement has already been filed. The defendant also filed an application under Section 34 of the Specific Relief Act on 21.10.2021, contending that the plaintiff has not sought any relief of possession despite the fact that the defendants are in possession of the property, hence, under Section 34 of the Specific Relief Act, the suit is not maintainable. After the aforesaid application was filed by the defendant, an

application under Order 6 Rule 17 of the CPC on 29.07.2022 wherein the plaintiffs have also sought the relief of possession to be added in the plaint.

4. Shri Ashok Garg, learned sr. counsel for the petitioner has submitted that the aforesaid relief has been sought subsequently by the plaintiffs which cannot be allowed as it was clearly barred by limitation and the valuable right of the defendant has been violated. Thus, it is submitted that the impugned order is liable to be set aside.

5. In support of his submission Shri Garg has also relied upon the decision rendered by the Supreme Court in the case of ***Radhika Devi v. Bajrangi Singh*** reported as ***Note No.130, M.P. Weekly Notes 1997(1)***.

Heard the learned counsel for the petitioner and perused the record.

6. So far as the scope of an amendment application is concerned, in the case of Radhika Devi (supra), the Supreme Court has held as under:-

“5. We find no force in the contention of the appellant. No doubt, the amendment of the plaint is normally granted and only in exceptional cases where the accrued rights are taken away by amendment of the pleading, the Court would refuse the amendment. This Court in *Laxmidas Dahyabhai Kabarwala v. Nanabhai Chunilal Kabarwala* (SCR at p. 582) held thus:

“It is, no doubt, true that, save in exceptional cases, leave to amend under Order 6, Rule 17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which had accrued to him by lapse of time. But this rule can apply only when either fresh allegations are added or fresh reliefs sought by way of amendment. Where, for instance, an amendment is sought which merely clarifies an existing pleading and does not in substance add to or alter it, it has never been held that the question of a bar of limitation is one of the questions to be considered in allowing such clarification of a matter already contained in the original pleading. The present is a *fortiori* so. The defendants here were not seeking to add any allegation nor to claim any fresh relief which they had prayed for in the pleading already filed.”

6. In that case this Court considered the cross-objections to be treated as a cross-suit since no alteration was being made in the written statement to treat it as a plaint originally instituted. The amendment which was sought to be made was treated to be clarificatory and, therefore, this Court had upheld the amendment of the written statement and treated it to be a cross-suit. The ratio therein squarely applies to a fact situation where the party acquires right by bar of limitation and if the same is sought to be taken away by amendment of the pleading, amendment in such circumstances would be refused. In the present case, the gift deed was executed and registered as early as 28-7-1978 which is a notice to everyone. Even after filing of the written statement, for 3 years no steps were taken to file the application for amendment of the plaint. Thereby the accrued right in favour of the respondents would be defeated by permitting amendment of the plaint. The High Court, therefore, was right in refusing to grant permission to amend the plaint.”

7. From the record it is found that the respondent/plaintiffs had filed the suit not only for the declaration but also for possession which is mentioned in the cause title itself. It is also found that in the plaint the plaintiffs have also paid the court fees for possession as well, and in the relief clause the following averments have been made :-

प्रार्थना है कि, वादीगण का वाद पत्र स्वीकार किया जाकर प्रतिवादी क्र. 1 व 2 (एक व दो) के विरुद्ध निम्न आशय का निर्णय व जयपत्र पारित किया जावे :-

(अ) वादीगण वादग्रस्त कृषि भूमि के स्वामी है। वादग्रस्त सम्पत्ति के संबंध में प्रतिवादी क्र. 1 व 2 (एक व दो) द्वारा कुटसंधि अथवा कुट रचना एवं अवैध दस्तावेजों के आधार पर राजस्व अभिलेखों में करवाये गये। परिवर्तन प्रारंभ से ही अवैध व शुन्य है तथा ऐसे कोई दस्तावेज अस्तित्व में आते हैं अथवा प्रस्तुत किये जाते हैं तो ऐसे दस्तावेज वादीगण के हितों के मुकाबले प्रारंभ से ही शुन्य व अवैध है, यह द घोषित करने की कृपा करें।

(ब) यह घोषित किया जावे कि, वादीगण वादग्रस्त कृषि भूमि सर्वे क्र. 51(इक्यावन) मी. रकबा 0.83 (जीरो दशमलो आठ तीन) है, ग्राम जवांसिया कुमार, तहसील व जिला- उज्जैन में स्थित के स्वामी वादीगण है तथा राजस्व व भू-अभिलेखों में अपना नाम चढ़ाये जाने का हकदार है।

(स) वादग्रस्त कृषि भूमि का अंतवर्तीय लाभ वादीगण आगामी कृषि भूमि वर्ष से 20,000/- (बीस हजार) रु. प्रतिवर्ष वादग्रस्त कृषि भूमि का आधिपत्य प्राप्त होने तक प्राप्त करने के अधिकारी है। अन्य उचित सहायता जो माननीय न्यायालय उचित समझे वादीगण को प्रतिवादी क्र. 1 व 2 (एक व दो) से दिलवाई जावे। इति।

8. A perusal of the plaint, as also the relief clause as aforesaid, it is apparent that the plaintiffs had intended to seek the relief of possession as well in the aforesaid suit but for their inadvertence.

9. This court is of the considered opinion that since the averments regarding the possession sought by the plaintiffs are already averred in the plaint, the non-mentioning of the same in the cause title was only clerical in nature and if the same is amended without further amendment in the plaint itself it would only be clarificatory in nature and does not cause any prejudice to the respondents.

10. So far as the reason relied upon by Shri Garg, learned Senior Advocate in the case of *Radhika Devi* (supra) is concerned the same is of no avail to the petitioner or rather helps the case of the defendants, as it clarifies that the amendment clarificatory in nature may be allowed at any time. This Court has no hesitation to hold that the amendment of relief clause by the plaintiff was clarificatory in nature and no illegality has been committed by the learned Judge of the trial Court in allowing the same.

11. Accordingly, petition being devoid of merits, is hereby *dismissed*.

(SUBODH ABHYANKAR)
J U D G E

Vs/krj