

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

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

MISC. PETITION No. 2819 of 2024

***SUBHASHCHANDRA S/O LATE BABULALJI AGRAWAL
DECEASED THROUGH LRS. SMT. UMA AND OTHERS***

Versus

SMT. MANISH AND OTHERS

Appearance:

Shri Vishal Baheti, learned counsel for the petitioners.

Shri Tarun Kushwah, Government Advocate for
respondents/State.

Shri Rohit Kumar Mangal, learned counsel for the respondent
No.7.

ORDER

(Reserved on 14/7/2024)

(Pronounced on 05/8/2024)

1. By this petition preferred under Article 227 of the Constitution of India, the petitioners/defendants No.1 and 2 have challenged the order dated 2/2/2024 (Annexure P/4) passed by the trial Court whereby application under Order 1 Rule 10 of the CPC preferred by respondent No.1 / plaintiff has been allowed. The petitioners have also challenged the order dated 2/4/2024 passed by the trial Court whereby application under Order 6 Rule 17 of the CPC preferred by the plaintiff for amendment of the plaint has been allowed.

2. The plaintiff has instituted an action on or about 7/1/2013 for declaration of his half share in the suit property, for partition and delivery of separate possession of his share therein, mesne profits and permanent injunction restraining the defendants from altering the nature of suit property in any manner. The plaintiff has contended that the suit property is joint property of the parties in which he has half share but the same has been denied by the defendants. Written statement was filed by the defendants contesting the plaintiff's claim denying that he has any title in the suit property as contended by him. An objection was also raised by them to the effect that the property has already been sold even prior to the date of institution of the suit.
3. On pleadings of the parties issues were framed by the trial Court after which the parties led oral as well as documentary evidence in support of their respective contentions.
4. Thereafter application under Order 1 Rule 10 of the CPC was preferred by the plaintiff for impleading purchasers of the suit property as parties to the suit which was contested by defendants submitting that the application has been filed at a belated stage after closure of evidence of the parties and despite the fact that objection had already been taken in the written statement that the property has already been sold. By order dated 2/2/2024 the application was

allowed by the trial Court on the ground that in view of the averments made in the application, the same deserves to be allowed and that the application has been preferred by the plaintiff in view of application filed by the defendants themselves for taking documents on record having been allowed. Thereafter the plaintiff filed an application under Order 6 Rule 17 of the CPC for amending the plaint to contend and claim relief that the sale deeds executed by the defendants in favour of the newly added defendants are null and void. The application was contested by defendants but has been allowed by trial Court by order dated 23/4/2024 on the ground that the same is in respect of the newly added defendants and appears to be just and necessary for a fair and complete adjudication of the disputes between the parties.

5. The aforesaid orders have been challenged by defendants No.1 and 2 on the ground that objection had been taken in the written statement itself that the property has been sold prior to the date of institution of the suit. However no steps were taken by the plaintiff for impleading the purchasers as parties to the suit. The application for impleadment has been filed only after closure of evidence of the parties which was wholly impermissible. The averments as have been sought to be made by the plaintiff are admittedly barred by time hence could not have been permitted. No explanation has been

given by plaintiff as to why the amendment could not be proposed earlier. No subsequent events have taken place which have necessitated the impleadment of parties or amendment of the plaint. The proposed parties are not necessary parties to the suit. It is hence submitted that the impugned orders deserve to be quashed. Reliance has been placed on the decision of the Apex Court in *Asian Hotels (North) Ltd. V/s. Alok Kumar Lodha & Ors.*, Civil Appeal No.3703 – 3750 decided on 12/7/2022 and *M. Revanna V/s. Anjanamma (dead) by Legal Representatives & Ors.* (2019) 4 SCC 332.

6. Per contra, learned counsel for the plaintiff has submitted that no particulars of the purchasers were given by the defendants at the time of filing of their written statement. It is only subsequently when an application under Order 8 Rule 1 of the CPC was preferred by them and the sale deeds were brought on record that plaintiff acquired knowledge of the purchasers and thereafter immediately filed the application. In absence of particulars of the purchasers he could not have filed the application earlier. The purchasers of the suit property are necessary parties for a complete adjudication of the disputes between the parties hence their impleadment has rightly been allowed by the trial Court. Since they have been impleaded as parties the plaintiff was necessarily required to plead that the sale deeds executed in their favour are illegal which has been permitted

by allowing his application under Order 6 Rule 17 of the CPC. The impugned orders are perfectly justified in view of which the petition deserves to be dismissed. Reliance has been placed on the decision of the Apex Court in *Amit Kumar Shaw & Anr. V/s. Farida Khatoon & Anr.* (2005) 11 SCC 403, *Raghu Thilak D. John V/s. S. Rayappan & Ors.* (2001) 2 SCC 472, *Sunil Kumar Lodhi & Ors. V/s. Snehlata Rao & Ors.* 2023 SCC Online MP 2351 and *Rajesh Kumar Aggarwal & Ors. V/s. K.K. Modi & Ors.* (2006) 4 SCC 385

7. I have considered the rival submissions of the learned counsel for the parties and have perused the record.
8. The claim has been instituted by the plaintiff for declaration of his share in the suit property and partition and delivery of separate possession of the same to him. In paragraph 2 and 7 of the written statement an objection was taken by defendants to the effect that the property has been sold even prior to the institution of the suit. However, on perusal of the said paragraphs it is evident that no particulars were given by defendants as to when, by whom and in whose favour the property has been sold. The details were wholly wanting and instead a general plea had been taken that the property has been sold numerous years ago and that plaintiff has knowledge of the same. It was not stated as to when and in what manner the plaintiff has acquired knowledge of the same. It hence cannot be

said that defendants had taken such particular detailed objection as regards sale of the suit property prior to filing of the suit on the basis of which plaintiff would have been obliged to implead the purchasers as parties to the suit or could have filed impleadment application.

9. On 4/2/2022 defendants filed an application under Order 8 Rule 1 and 3 of the CPC along with which they filed 18 sale deeds executed with respect to the suit property and the mutation orders passed pursuant thereto. The said application was allowed by the trial Court. Thereafter application under Order 1 Rule 10 of the CPC was preferred by plaintiff for impleading the purchasers under the sale deeds as parties to the suit which was perfectly justified since earlier in absence of particulars of the purchasers, application could not have been filed. Since the proposed parties are purchasers of the suit property, their impleadment is necessary for a just and fair adjudication of the disputes between the parties and has rightly been allowed by the trial Court. The ground of delay as taken by defendants No.1 and 2 is hence not sustainable.

10. Since the purchasers had been impleaded as parties to the suit, in view of such impleadment the plaintiff had the right to make necessary averments in respect of them as was sought to be done by him by way of his application under Order 6 Rule 17 of the CPC. In

that application no new averment was made by plaintiff and he only sought amendment of the plaint to seek relief that the said deeds executed in favour of the purchasers are null and void. The said amendment was wholly permissible and was based upon subsequent event of the sale deeds having been brought on record by defendants themselves hence has rightly been allowed by the trial Court which has further observed that the issue as to whether the relief claimed by the plaintiff would be barred by time would be framed on the basis of pleadings of the parties and shall be decided in accordance with law. At the present stage, it cannot be said that admittedly the suit in respect of the sale deeds executed in favour of the purchasers is barred by time.

11. In *Asian Hotels (North) Ltd.* (supra) it was held that plaintiff could not join any party as a defendant who may not be a necessary or a proper party. In the present case the parties added are purchasers of the suit property hence are necessary parties to the suit. In *M. Revanna* (supra) it was held that there should be due diligence on part of plaintiff in proposing the amendment. In the present case plaintiff has filed application for impleadment and amendment immediately upon acquiring knowledge of the purchasers and could not have filed the same earlier. There has hence been due diligence

on his part. The judgments relied upon by the learned counsel for the defendants hence do not help him in any manner.

12. Thus in view of the aforesaid discussion, I do not find that the trial Court has committed any error in passing the impugned orders. The petition is devoid of merits and is hereby dismissed.

(PRANAY VERMA)
JUDGE

SS/-

