



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

BEFORE

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 6th OF SEPTEMBER, 2024**

WRIT PETITION No. 3565 of 2016

SMT. VIMLA GUPTA AND OTHERS

Versus

***DAYA (SINCE DECEASED) THROUGH LRS HULAR BAI AND
OTHERS***

Appearance:

Shri Sanjay Agrawal- Senior Advocate with Shri Arpit Agrawal – Advocate for the petitioners.

Shri Gajendra Parashar – PL for respondent no.6 / State.

Shri Arvind Soni – Advocate for the respondents.

ORDER

This petition under Article 227 of the Constitution of India has been filed seeking the following reliefs :-

(i) *This Hon'ble Court may summon the record of Civil Suit No.15-A/2015 (Smt. Vimla Gupta and another vs. Daya (since deceased, now by LRs) and others) pending in the court of II Addl. District Judge, Sehore.*

(ii) *set aside the order dated 22.1.2016 contained in Annexure P/6 passed by II Addl. District Judge, Sehore in Civil Suit No.15-A/2015 (Smt. Vimal Gupta and another Vs. Daya (since deceased, now by LRs.) and others) so far as the same has dismissed the amendment application.*



(iii) to grant any other relief as deemed just and proper in the facts and circumstances of the case.

2. It is submitted by counsel for petitioners that petitioners had filed a suit for declaration of title and permanent injunction. The suit was filed in the year 2010. Defendants filed an application under Order 39 Rule 1 and 2 CPC. By order dated 18.11.2015 Trial Court enjoined plaintiffs / petitioners from interfering with the peaceful possession of the defendants. Taking advantage of the said order, respondents forcibly took possession of the property in dispute from the plaintiffs / petitioners on 20.11.2015. Accordingly, on 18.1.2016 petitioners moved an application for amendment in the plaint seeking relief of possession. However, the said application has been rejected by the impugned order by holding that the application filed by the petitioners is delayed. If the petitioners were dispossessed on 20.11.2015, then they could have filed an application for amendment on 23.11.2015 and 30.11.2015. It was further held that even the petitioners had alleged that the property was given on *Batai*, therefore, from 2011 itself they were aware that land has been given on *Batai*.

3. Challenging the order passed by the court below, it is submitted by counsel for petitioners that since the amendment was based on subsequent events, therefore, it should have been allowed. Petitioners were enjoined by the Trial Court by order dated 18.11.2015 and taking advantage of the same; the petitioners were dispossessed on 20.11.2015. Merely because an application for amendment was not filed on 23.11.2015 and 30.11.2015 but it was filed on 18.1.2016, it cannot be said that



amendment was belated. Furthermore, the Court is required to consider relevancy of the amendment and not delay only.

4. Per contra, petition is vehemently opposed by counsel for the respondents and it is submitted that Trial Court has rightly passed the order thereby rejecting the application filed under Order 6 Rule 17 CPC.

5. Considered the submissions made by counsel for the parties.

6. According to the petitioners, they were enjoined by the Trial Court by order dated 18.11.2015 and they were dispossessed by the respondents on 20.11.2015. Application for amendment was filed within a period of two months. Trial Court has taken too technical and hyper sensitive view by holding that the application could have been filed on 23.11.2015 and 30.11.2015.

7. Furthermore, any finding given at the stage of temporary injunction has no bearing on the final outcome of the case and the Trial Court can always give a contrary finding while finally deciding the suit. Therefore, it cannot be said that petitioners were not in possession even on the date of filing of the suit.

8. Be that whatever it may be.

9. In the considered opinion of this Court, amendment which was sought by the petitioners was necessary for disposal of the suit.

10. Accordingly, order dated 22.1.2016 passed by II Additional District Judge, Sehore in Civil Suit No.15-A/2015 is hereby **set-aside**.

11. Application filed by the petitioners for amendment in the plaint is hereby **allowed**.

12. Amendment be carried out within the period stipulated by the Trial Court.



13. The defendants shall have a right to make consequential amendment in their written statement.

14. With aforesaid observations, petition is **disposed of**.

(G. S. AHLUWALIA)
JUDGE

JP