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

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 9th OF JANUARY, 2024

MISC. PETITION No. 3957 of 2018

BETWEEN:-

1. **BRAJVASILAL PATEL S/O SHRI SHESHMANI PATEL, AGED ABOUT 50 YEARS, OCCUPATION: AGRICULTURIST VILLAGE BADVAR TEHSIL GUDH (MADHYA PRADESH)**
2. **RAMNARAYAN PATEL S/O SHRI SHESHMANI PATEL, AGED ABOUT 48 YEARS, OCCUPATION: AGRICULTURIST R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
3. **SATYA NARAYAN PATEL S/O SHRI SHESHMANI PATEL, AGED ABOUT 46 YEARS, OCCUPATION: SERVICE/AGRICULTURIST R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
4. **RAMCHANDRA PATEL S/O SHRI SHESHMANI PATEL, AGED ABOUT 42 YEARS, OCCUPATION: AGRICULTURIST R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
5. **SMT. TERSI PATEL D/O SHRI SHESHMANI PATEL, AGED ABOUT 40 YEARS, OCCUPATION: HOUSE WIFE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
6. **SHAKUNTALA PATEL W/O SHRI SATYA NARAYAN PATEL, AGED ABOUT 35 YEARS, OCCUPATION: HOUSE WIFE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
7. **SACHIN PATEL S/O SHRI RAMCHANDRA PATEL, AGED ABOUT 12 YEARS, OCCUPATION: STUDENT MINOR THR. HIS NATURAL GUARDIAN FATHER SHRI RAMCHANDRA PATEL R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI SANJEEV KUMAR SINGH -ADVOCATE)

AND

1. **JAGDISH S/O LATE SHRI MANGAL KURMI, AGED ABOUT 53 YEARS, OCCUPATION: AGRICULTURIST VILLAGE BADVAR TEHSIL GUDH (MADHYA PRADESH)**
2. **BAIJNATH S/O LATE SHRI MANGAL KURMI, AGED ABOUT 56 YEARS, R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
3. **SHIV SHANKAR S/O LATE SHRI BALDEV KURMI, AGED ABOUT 30 YEARS, R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
4. **CHHOTNI D/O LATE JAGESHWAR, AGED ABOUT 80 YEARS, OCCUPATION: HOUSE WIFE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
5. **RAM PRASAD S/O LATE JAGESHWAR OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
6. **RAMDEV S/O LATE SHRI BHAGWAT KURMI, AGED ABOUT 50 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
7. **KALI W/O BHOLA, AGED ABOUT 75 YEARS, OCCUPATION: HOUSE WIFE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
8. **SHYAMLAL S/O LATE SHRI BHOLA KURMI, AGED ABOUT 45 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
9. **RAMNARESH S/O LATE SHRI BHOLA KURMI, AGED ABOUT 40 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
10. **RAMNIVAS S/O LATE SHRI BHOLA KURMI, AGED ABOUT 30 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P.**

(MADHYA PRADESH)

11. SUKHVANTI W/O SHRI TRIVENI PRASAD KURMI, AGED ABOUT 60 YEARS, OCCUPATION: HOUSE WIFE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)
12. KEDAR PRASAD S/O LATE SHRI TRIVENI PRASAD, AGED ABOUT 30 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)
13. FULLI W/O SHRI CHANDRABHAN, AGED ABOUT 40 YEARS, R/O VILL TAMRA TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)
14. JOKHULAL S/O LATE SHRI JAMUNA KURMI, AGED ABOUT 58 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)
15. UGRASEN S/O LATE SHRI JAMUNA KURMI, AGED ABOUT 45 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)
16. INDRABHAN PATEL S/O LATE SHRI ROHINI PRASAD PATEL, AGED ABOUT 40 YEARS, OCCUPATION: LABOUR R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)
17. MUNIRAJ PATEL S/O LATE SHRI ROHINI PRASAD PATEL, AGED ABOUT 35 YEARS, OCCUPATION: LABOUR R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)
18. ASHA PATEL W/O SHRI BANSHPATI PATEL, AGED ABOUT 30 YEARS, OCCUPATION: HOUSE WIFE R/O VILL. DIHI TEH. HUZUR DISTT. REWA M.P. (MADHYA PRADESH)
19. USHA PATEL W/O SHRI VINOD PATEL R/O VILL. PAIKANIYA TEH. CHURHAT DISTT. SIDHI M.P. (MADHYA PRADESH)
20. SUGREEV S/O LATE SHRI RAMDAS, AGED ABOUT 53 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)

21. **INDRAPAL S/O LATE SHRI RAMDAS, AGED ABOUT 45 YEARS, OCCUPATION: SERVICE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
22. **MUNNI MAHESH S/O LATE SHRI MOHAN KURMI, AGED ABOUT 25 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
23. **GIRIJA PRASAD S/O LATE SHRI DHARMADAS, AGED ABOUT 40 YEARS, OCCUPATION: AGRICULTURE R/O BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
24. **PHULJHARIYA W/O LATE SHRI GOKUL KURMI, AGED ABOUT 60 YEARS, OCCUPATION: HOUSE WIFE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
25. **SMT. CHANDRAVATI D/O LATE SHRI RAGHUNATH KURMI, AGED ABOUT 60 YEARS, OCCUPATION: HOUSE WIFE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
26. **SUDARSHAN S/O LATE SHRI RAM PRASAD KURMI, AGED ABOUT 35 YEARS, OCCUPATION: SERVICE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
27. **KESHAV SHANKAR S/O LATE SHRI RAM PRASAD KURMI, AGED ABOUT 30 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
28. **DWARIKA S/O LATE SHRI RAMDULARE, AGED ABOUT 50 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
29. **MANVATI W/O LATE SHRI BHAIYALAL PATEL, AGED ABOUT 55 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
30. **SHIV PRASAD PATEL S/O LATE SHRI BHAIYALAL PATEL, AGED ABOUT 35 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**

31. **RAMNIRANJAN S/O LATE SHRI BHAIYALAL PATEL, AGED ABOUT 30 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
32. **AJAY PATEL S/O LATE SHRI BHAIYALAL PATEL, AGED ABOUT 28 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
33. **SUNITA PATEL D/O LATE SHRI BHAIYALAL, AGED ABOUT 25 YEARS, OCCUPATION: HOUSE WIFE R/O VILL. NADAGAON TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
34. **RANNU D/O LATE SHRI BHAIYALAL, AGED ABOUT 22 YEARS, OCCUPATION: HOUSE WIFE R/O VILL. GANNORE TEH. CHURHAT DISTT. SIDHI M.P. (MADHYA PRADESH)**
35. **BUDDHASEN S/O LATE SHRI RAMCHANDRA, AGED ABOUT 50 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
36. **RAMMILAN S/O LATE SHRI RAMANAND, AGED ABOUT 35 YEARS, OCCUPATION: AGRICULTURE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
37. **BHAGWANDEEN S/O LATE SHRI KALU KURMI, AGED ABOUT 60 YEARS, OCCUPATION: SERVICE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
38. **MUNNI PATEL W/O LATE SHRI JAGDISH PRASAD PATEL, AGED ABOUT 55 YEARS, OCCUPATION: HOUSE WIFE R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
39. **SANTOSH PATEL S/O LATE SHRI JAGDISH PRASAD PATEL, AGED ABOUT 26 YEARS, OCCUPATION: LABOUR R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**
40. **OM PRAKASH S/O LATE SHRI JAGDISH PRASAD PATEL, AGED ABOUT 22 YEARS, OCCUPATION: LABOUR R/O VILL. BADVAR TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)**

41. GUDIYA PATEL D/O LATE SHRI JAGDISH PRASAD PATEL, AGED ABOUT 35 YEARS, R/O SIRMOUR CHOURAHA REWA DISTT. REWA M.P. (MADHYA PRADESH)
42. MAMTA PATEL D/O LATE SHRI JAGDISH PATEL R/O INDORE M.P. (MADHYA PRADESH)
43. SAVITA PATEL D/O LATE SHRI JAGDISH PATEL, AGED ABOUT 28 YEARS, R/O VILL. DUARI TEH. GUDH DISTT. REWA M.P. (MADHYA PRADESH)
44. POOJA PATEL D/O LATE SHRI JAGDISH PATEL, AGED ABOUT 20 YEARS, R/O VILL. DIHI TEH. HUZUR DISTT. REWA M.P. (MADHYA PRADESH)
45. INDARANIYA W/O LATE MAHAVEER PATEL, AGED ABOUT 60 YEARS, OCCUPATION: HOUSE WIFE N.S. (MADHYA PRADESH)
46. JAGJEEVAN S/O LATE SHRI MAHAVEER PATEL, AGED ABOUT 40 YEARS, OCCUPATION: HOUSE WORK N.S. (MADHYA PRADESH)
47. CHANDRAMANI S/O LATE SHRI MAHAVEER PATEL, AGED ABOUT 36 YEARS, OCCUPATION: AGRICULTURE N.S. (MADHYA PRADESH)
48. HARENDRA S/O LATE SHRI MAHAVEER PATEL, AGED ABOUT 30 YEARS, OCCUPATION: AGRICULTURE N.S. (MADHYA PRADESH)
49. STATE OF MADHYA PRADESH THR. COLLECTOR REWA DISTT. REWA M.P. (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI JAGJIWAN LAL MISHRA - ADVOCATE)

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

ORDER

Though, this petition is filed challenging several orders, learned counsel for the petitioners fairly admits that on 31/8/18 he restricted his challenge to the order dated 21.12.2017 whereby an application under Order 14 Rule 2 CPC

was dismissed. He did not press petition against other orders.

Therefore, with the consent of the parties this case is taken up for hearing only to consider the validity and correctness of the order dated 21.12.2017 passed by learned 4th Additional District Judge , Rewa deciding an application under Order 14 Rule 2 of the CPC.

It is not in dispute that the petitioner who are defendants 1 to 3 before the trial Court had filed an application under Order 14 Rule 5 of the CPC which was dismissed vide order dated 6.5.2016. Shri Sanjeev Singh submits that this order dated 6.5.2016 was not put to challenge before any superior Court. The application under Order 14 Rule 2 of the CPC says that since a preliminary objection was taken in regard to the provisions contained in Order 2 Rule 2 of the CPC, therefore, application under Order 14 Rule 2 CPC should have been allowed and preliminary issue in regard to maintainability of the suit in view of the provisions contained in Order 2 Rule 2 CPC, should have been decided first.

Though orally Shri Sajeey Singh submits that plea of res judicata was taken but he fairly submits that he is not in possession of any document to substantiate that plea of res of judicata was taken. That was the bone of the contention. In fact, the application contained in Annexure P-4 also does not make any mention of plea of res judicata to be tried as a preliminary issue.

Law in this behalf is crystal clear. The Madras High Court in the case of ***S.G. Badrinath v. Jagannathan and Another, AIR 2004 Madras 161*** wherein it is held that consideration of an issue and its disposal as a preliminary issue has, after the 1976 amendment, been made permissible only in limited case. Those issues are of law relate to (i) the jurisdiction of the Court; or (ii) a bar of the suit created by any law for the time being in force. As far as

jurisdiction of the Court is concerned, that is not covered under Order 2 Rule 2 which was a plea taken in the application under Order 14 Rule 2 of the CPC. As far as suit being barred by any law is concerned, for that application under Order 7 Rule 11 of the CPC is maintainable and not application under Order 14 Rule 2 of the CPC and when examined from this angle then the application was clearly misconceived with an idea to delay the proceeding in the suit.

Accordingly, when the impugned order is tested, it cannot be found faulted with. Hence, the petition fails and is dismissed. The interim order granted earlier by a Coordinate Bench is hereby vacated.

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(VIVEK AGARWAL)
JUDGE