

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

**BEFORE**

**HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV**

**MISC. PETITION No.1660 of 2019**

**Between:-**

- 1. SAKEEL AHMAD S/O HAZI NASIR, AGED ABOUT 52 YEARS.**
- 2. HAZI NASEER MOHAMMAD S/O HAZI MEHBOOB (SINCE DECEASED THROUGH LEGAL HEIRS)**
  - (I) SUHAIL AHMED, AGED ABOUT 48 YEARS.**
  - (II) AKIL AHMED, AGED ABOUT 34 YEARS.**

**(ALL RESIDENTS OF SATNA, TEHSIL RAGHURAJ NAGAR, DISTRICT SATNA, PRESENTLY RESIDING IN VILLAGE BEOHARI, TEHSIL AND DISTRICT SHAHDOL).**

**.....PETITIONERS**

**(BY SHRI SANJAY AGRAWAL - ADVOCATE)**

**AND**

- 1. CHANDRAMOHAN S/O GURUMUKH DAS SINDHI (SINCE DECEASED THROUGH LEGAL HEIRS).**
  - (I) RAMESH KUMAR AASHUDANI S/O LATE CHANDRAMOHAN AASHUDANI AGED ABOUT 34 YEARS, OCCUPATION-BUSINESS, R/O GRAM BEOHARI POLICE STATION, TEHSIL BEOHARI, DISTRICT SHAHDOL (M.P).**
  - (II) SMT. KRISHNA DEVI AASHUDANI W/O LATE CHANDRAMOHAN AASHUDANI AGED ABOUT 62 YEARS OCCUPATION-HOUSEWIFE R/O GRAM BEOHARI POLICE STATION TEHSIL BEOHARI DISTRICT SHAHDOL (M.P).**

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- (III) MS. MEENA W/O SHRI KARODILAL D/O CHANDRAMOHAN AASHUDANI, AGED ABOUT 46 YEARS.
- (IV) MS. NANDA W/O RAMESH KUMAR D/O CHANDRAMOHAN AASHUDANI AGED ABOUT 43 YEARS R/O BUDAR DISTRICT SHAHDOL (M.P.).
- (V) MS. LATA W/O ANIL KUMAR D/O CHANDRAMOHAN AASHUDANI, AGED ABOUT 40 YEARS R/O SAMVITI DISTRICT KORBA C.G.
- (VI) MS. CHANDNI W/O SURENDRA KUMAR D/O CHANDRAMOHAN AASHUDANI AGED ABOUT 38 YEARS R/O CHAND, DISTRICT KORBA, C.G.
- (VII) MS. KANTA W/O ASHOK KUMAR D/O CHANDRAMOHAN AASHUDANI AGED ABOUT 32 YEARS R/O BILASPUR, DISTRICT BILASPUR, C.G.
2. STATE OF MADHYA PRADESH THROUGH DISTRICT COLLECTOR, DISTRICT SHAHDOL (M.P.).

....RESPONDENTS

*(BY ARVIND KUMAR SHRIVASTAVA - ADVOCATE)*

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Reserved on : 17.02.2022  
Delivered on : 26.02.2022  
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**ORDER**

The petitioners are challenging the order dated 08.03.2019 (Annexure P/7) passed by the Additional District Judge, Beohari, District Shahdol in RCSA-36/13, whereby, during pendency of the

regular First Appeal, an application under Order 41 Rule 27 of the C.P.C. has been allowed.

2. The facts of the case are that petitioners have filed a Civil Suit on 04.05.1999 for declaration and possession in respect of Khasra No.2176 area 0.049 hectares situated in village Beohari District Shahdol and for demolition of the construction made on the said Khasra. They also claimed the relief of injunction. The learned trial court decreed the suit vide judgment and decree dated 30.11.2011, against which the respondents/ defendants have filed an appeal before the Court of Additional District Judge, Beohari. During the pendency of the appeal under Section 96 of the CPC, the respondents/ defendants filed an application under Order 41 Rule 27 of the CPC. The petitioners/ plaintiffs opposed the said application and filed the reply. The first appellate court allowed the application under Order 41 Rule 27 of the CPC. Hence, the petitioners are before this court in the present writ petition.

3. Learned counsel appearing for the petitioners submits that the learned court below has committed palpable error while adjudicating the application under Order 41 rule 27 of the CPC at interlocutory stage. Exercise of such power is wholly illegal and untenable. According to him, the learned court below ought to have heard the

appeal on merits and then only should have decided the application filed under Order 41 Rule 27 of CPC and, therefore, interference is sought for. He placed reliance on the decision of Privy Council in the matter of *Parsotim thakur vs. Lal Mohar Thakur*<sup>1</sup>, *Arjun Singh Vs. Kartar Singh and others*<sup>2</sup>, *Smt. Shankuntala chakraborty Vs. Shiba Prosad Roy and another*<sup>3</sup>, *Khemchand Mulchand Vs. Government of M.P. & others*<sup>4</sup>, *Suresh Prasad & Others Vs. Ram Krishna & others*<sup>5</sup> and *Hazi Mohammad Hanif Qureshi Vs. Kailashchand & others*<sup>6</sup>.

4. Learned counsel for the respondents opposed the petition and submits that in exercise of jurisdiction under Article 227 of the Constitution, this court should not interfere into the order passed by the court below and the writ petition should be dismissed.

5. I have heard the learned counsel for the parties and perused the record.

6. It is settled law that when the court hears the parties on merits of the matter, it is also required to hear the application filed under Order 41 Rule 27 of the CPC to know whether additional evidence submitted before the court, in fact, is necessary or not. If the court comes to the

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<sup>1</sup> ILR 1931 page 654.

<sup>2</sup> AIR 1951 SC 193.

<sup>3</sup> AI R 1998 Cal 29.

<sup>4</sup> 1972 MPLJ 524

<sup>5</sup> 2002 (3) MPLJ 208.

<sup>6</sup> 2002(1) MPHT 27 (C.G.).

conclusion that such additional evidence, if admitted on record, would affect the merits of the matter then after recording a finding in relation to Clause (a), (aa) or (b) of Order 41 Rule 27 (1) of CPC, the court may admit such additional evidence.

7. From perusal of the impugned order it is seen that the court below has not heard the parties on merits, instead, it has decided the application under Order 41 Rule 27 of CPC against the settled legal position.

8. In view of aforesaid, the impugned order dated 08.03.2019 (Annexure P-7) is set aside. The court below is directed to consider the application under Order 41 Rule 27 of CPC at appropriate stage.

9. Petition is allowed to the extent indicated above.

**(PURUSHAINDR KUMAR KAURAV)**  
**JUDGE**

MKL.

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