

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

**BEFORE**

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

**MISC. PETITION No.3253 of 2019**

**Between:-**

**BRAJESH KUMAR, S/O SANTOSH KUMAR  
JAISWAL, AGED ABOUT 39 YEARS,  
OCCUPATION: SELF EMPLOYED, R/O  
APNA APARTMENT, NEW INDIRA  
COLONY, BURHANPUR, DISTRICT  
BURHANDPUR (M.P.)**

**.....PETITIONER**

***(BY SHRI SANKALP KOCHAR, ADVOCATE)***

**AND**

- 1. SANTOSH KUMAR, S/O SHYAMLALJI,  
AGED ABOUT 68 YEARS, R/O IN MASJID  
QUARTER, KILA ROAD, DISTRICT  
BURHANPUR (M.P.)**
- 2. SHAKUNTALA DEVI, W/O SANTOSH KUMAR,  
AGED ABOUT 66 YEARS, R/O IN MASJID  
QUARTER, KILA ROAD, BURHANPUR (M.P.)**
- 3. SMT. ARTI, W/O KAILASH JAISWAL, AGED  
ABOUT 46 YEARS, D/O SANTOSH JAISWAL,  
R/O SUDARSHAN COLONY, PLOT NO.8,  
DEVPUR, DHULIYA (MAHARASHTRA)**
- 4. SMT. KAVITA, W/O VIJAY KUMAR JAISWAL,  
AGED ABOUT 45 YEARS, D/O SANTOSH  
JAISWAL, R/O NEAR CHOURAHA,  
AMRAWATI (MAHARASHTRA)**
- 5. ASHISH, S/O SANTOSH KUMAR JAISWAL,  
AGED ABOUT 43 YEARS, R/O IN DORA  
MASJID QUARTER, KILA ROAD,  
BURHANPUR (M.P.)**
- 6. SMT. RAJNI, W/O UMESH DHANESHWARI,  
AGED ABOUT 41 YEARS, R/O DASHMESH  
NAGAR, BEHIND JANTA NAGAR, NEAR**

**GOVINDNAGAR, CHANDKHEDA  
GANDHINAGAR, AHMADABAD (GUJRAT)**

- 7. SHAKUNTALA DEVI W/O SHRI SURENDRA RAI, AGED ABOUT 65 YEARS, R/O BUDHWARI BAZAR NEAR RAM MANDIR CHHINDWARA (MADHYA PRADESH)**
- 8. ASHOK KUMAR S/O LATE SHRI SHYAMLALJI, AGED ABOUT 65 YEARS, R/O NAVALKHA COMPLEX BLOCK D FLAT NO 31 INDORE (MADHYA PRADESH)**
- 9. SMT VIDYA DEVI W/O SHRI ASHOK KUMAR R/O NAVALKHA COMPLEX BLOCK D FLAT NO 31 AND 32 INDORE (MADHYA PRADESH)**
- 10. ANIL KUMAR S/O LATE SHYAMLALJI JAISWAL, AGED ABOUT 61 YEARS, R/O KISHANGANJ INDRAPURI APARTMENT MHOW DIST INDORE MP (MADHYA PRADESH)**
- 11. DELIP KUMAR S/O LATE SHYAMLAL JAISWAL, AGED ABOUT 60 YEARS, R/O 502 KANAT ROAD MHOW DISTT INDORE (MADHYA PRADESH)**
- 12. SMT VANDANA W/O DILIP KUMAR, AGED ABOUT 51 YEARS, R/O 502 KANAT ROAD MHOW DISTT INDORE (MADHYA PRADESH)**
- 13. SMT SHASHI DEVI W/O SHRI AVINASH JAISWAL, AGED ABOUT 57 YEARS, R/O BADAWADA WADE WALE NEEMACH DISTT NEEMACH (MADHYA PRADESH)**
- 14. SMT KIRAN BALA W/O SHRI HEMANT KUMAR, AGED ABOUT 54 YEARS, R/O VAISHALI NAGAR INDORE (MADHYA PRADESH)**
- 15. SHRI SYED SHAKEEL, S/O SYED SHARIFUDDIN, AGED ABOUT 43 YEARS, R/O MOHALLA KHANKA WARD TEHSIL AND DISTT BURHANPUR (MADHYA PRADESH)**
- 16. SAYED AKHTAR ALI S/O MOHAMMAD MUZZAFFAR, AGED ABOUT 64 YEARS, R/O MOHALLA KHANKA WARD TEHSIL AND DISTT BURHANPUR (MADHYA PRADESH)**

17. **TAHSINUDDIN S/O NASEEMUDDIN, AGED ABOUT 28 YEARS, R/O MOHALLA JAISTAMBH WARD TEHSIL AND DISTT BURHANPUR (MADHYA PRADESH)**
18. **ATEEK KHAN S/O RASHEED KHAN, AGED ABOUT 44 YEARS, R/O MOHALLA CHANDRAKALA TEHSIL AND DISTT BURHANPUR (MADHYA PRADESH)**
19. **MUSHTAK KHAN S/O HABIB KHAN, AGED ABOUT 44 YEARS, R/O RAJENDRA PRASAD WARD TEHSIL AND DISTT BURHANPUR (MADHYA PRADESH)**
20. **AKEELUDDIN S/O CHIRAGUDDIN AULIYA, AGED ABOUT 45 YEARS, R/O MOHALLA JAISTAMBH WARD TEHSIL AND DISTT BURHANPUR (MADHYA PRADESH)**
21. **GHULAM MEHBOOB S/O MOHAMMAD CHIRAG, AGED ABOUT 48 YEARS, MOHALLA JAISTAMBH WARD TEHSIL AND DISTT BURHANPUR (MADHYA PRADESH)**
22. **FAHEEM AKHTAR S/O SAYEED AHMED, AGED ABOUT 35 YEARS, R/O MOHALLA JAISTAMBH WARD TEHSIL AND DISTT BURHANPUR (MADHYA PRADESH)**
23. **SHAKEEL SAHAB S/O MANJLE SAHAB, AGED ABOUT 365 YEARS, R/O MOHALLA JAISTAMBH WARD TEHSIL AND DISTT BURHANPUR (MADHYA PRADESH)**
24. **NAGEENLAL S/O ICCHARAM, AGED ABOUT 65 YEARS, R/O ICHCHA BHAWAN VILLAGE CHOPARA TEHSIL AND DISTT BURHANPUR (MADHYA PRADESH)**
25. **STATE OF MADHYA PRADESH THROUGH COLLECTOR BURHANPUR DISTT BURHANPUR (MADHYA PRADESH)**
26. **YOGESH S/O RATILAL SHAH, R/O IN FRONT OF GYANVARDHAN SABHAGRIH RAJPURA BURHANPUR (MADHYA PRADESH)**

**....RESPONDENTS**

**(SHRI VIJENDRA SINGH CHOUDHARY, ADVOCATE  
FOR 1 & 2 AND SANJIV KUMAR MISHRA, ADVOCATE  
FOR RESPONDENT NO.26)**

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Reserved on : 17.02.2022  
Delivered on : 26.02.2022

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**ORDER**

The petitioner-plaintiff is aggrieved by the impugned order dated 25.06.2019 (Annexure P/1), passed by the 1<sup>st</sup> Additional District Judge, Burhanpur, RCSA No.2201/2014, whereby, an application of the petitioner-plaintiff under Order 7 Rule 14(3) of CPC to take the gift deed on record has been rejected.

2. The facts of the case are that the petitioner-plaintiff has filed the suit claiming the decree of permanent injunction, partition and separation in relation to the suit property as mentioned in the plaint. According to the petitioner, his grandfather, namely, Shyamlal was in joint Hindu family alongwith defendants No.1 to 14. The grandfather of the petitioner-plaintiff passed away on 02.08.1985 and his wife Tara Devi passed away on 26.02.1986. Since, no partition had taken place and various properties were purchased from the fund of the joint family, therefore, the suit in question was instituted. The issues were framed on 20.06.2018. The petitioner filed affidavit under Order 18 Rule 4 of the CPC and the evidence was recorded. The petitioner submits that during the pendency of the civil suit, he got hold of the gift deed dated 28.09.2012 on 24.06.2019 which shows that certain properties such as Flat No.D-31 and 32 was gifted out of the joint family property. Hence, the petitioner filed an application under Order

7 Rule 14(3) of the CPC before the trial Court to take the said gift deed on record. Learned trial Court vide order dated 25.06.2019 has rejected the application under Order 7 Rule 14 of CPC and hence, the petitioner is in the instant petition.

3. Learned counsel for the petitioner submitted that the impugned order is without any cogent reason. The gift deed in question is necessary to be considered for the proper and complete adjudication of the controversy and the learned trial Court has erred in rejecting the said application merely on the ground that the evidence of the plaintiff is closed. By placing reliance on the decision of the Supreme Court in the case of *Chakreshwari Construction Pvt. Ltd. Vs. Manoharlal*<sup>1</sup> and decision of this court in the matter *Sudheer Jain and Others Vs. Sunil Modi and Others*<sup>2</sup>, he contends that law permits the parties to file additional evidence on any stage of the trial with the leave of the Court provided that the case is made out to seek such indulgence and, in the present case, the petitioner has been able to explain the reasons for delay, therefore, interference is sought for.

4. Learned counsel for the respondents opposed the petition and he submits that the order passed by the learned trial Court is absolutely in accordance with law. There is no error which would cause miscarriage of justice and hence, the present petition deserves to be dismissed.

5. I have perused the order passed by the trial Court which records the reason for rejecting of application under Order 7 Rule 14 of CPC. The reason assigned by the trial Court is that the suit is pending since long. The second reason is that after giving repeated opportunities to the petitioner-plaintiff the evidence was closed. The third reason is that

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1 (2017) 5 SCC 212

2 (2019) 3 MPLJ 312

the petitioner-plaintiff has not explained as to why the certified copy of the said gift deed was not earlier applied. The fourth reason is that the gift deed sought to be produced has not been shown to be related to the disputed property.

6. I have perused the application under Order 7 Rule 14(3) of the CPC which reads as under:

1. यह कि वादी ने यह वाद प्रतिवादीगण के विरुद्ध प्रस्तुत किया है/उक्त वाद के चलने के मध्य इस प्रतिवादी को यह जानकारी मिली कि संयुक्त परिवार की संपत्ति इन्दौर विकास प्राधिकरण योजना के अंतर्गत भी है जिसके संबंध में जानकारी निकाले जाने के पश्चात उक्त संयुक्त परिवार का संपत्ति में इन्दौर विकास प्राधिकरण की योजना क्रमांक 31 में फ्लेट नंबर डी 31 संतोष कुमार एवम् फ्लेट नंबर 32 जो वादी की बुआ के नाम से थे उक्त दोनों फ्लेट में से मेन फ्लेट संतोष कुमार ने दानपत्र के द्वारा वरुण कुमार को तथा शकुंतला बाई ने दानपत्र के द्वारा वादी की चाची विध्यादेवी को दान दे दिया है उक्त दोनों दानपत्र की प्रमाणित प्रतिलिपि प्राप्त करलेख सूची के साथ में अभिलेख पर प्रस्तुत कर रहा है। यह प्रमाणित प्रतिलिपि वादी को दि० 24/6/19 का ही प्राप्त हुई है। इस कारण वह अविलंब अभिलेख पर प्रस्तुत कर रहा है। कारण सदभाविक है। उक्त दस्तावेज प्रकरण के न्यायिक निराकरण हेतु आवश्यक व उचित है।

अतएव प्रार्थना है कि आवेदनपत्र स्वीकार किये जाकर उक्त दस्तावेज अभिलेख पर लिये जाने के आदेश प्रदान करने की कृपा करें।”

7. The perusal of the paragraph 33 of the plaint also shows that the petitioner-plaintiff claimed 1/46th share of the property mentioned in para 3 of the plaint. Para-3 of the plaint does not include the subject matter of the gift deed sought to be produced i.e. Flat No.D-31 and 32. The scope of interference under Article 227 of the Constitution is limited. Even a wrong/illegal order need not be interfered with on mere asking or on a drop of hat {*See Shalini Shyam Shetty and another vs. Rajendra Shankar Patil*<sup>3</sup>}.

**8.** In view of the aforesaid, it is found that learned trial Court has not committed any palpable error so far to call for any interference under Article 227 of the Constitution. Hence, the instant petition is dismissed.

**(PURUSHAINDRA KUMAR KAURAV)  
JUDGE**

Jasleen