

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL
ON 20th OF FEBRUARY, 2025**

CIVIL REVISION No. 196 of 2023

***BHAGWAT PRASAD (DEAD) THROUGH LRS GEETA DWIVEDI AND
OTHERS***

Versus

SANJAY DWIVEDI AND OTHERS

Appearance

Shri Satya Prakash Mishra - Advocate for the applicants.

Shri A.K Pathak – Advocate for respondent 1.

Shri Ramji Pandey – Government Advocate for respondent/State.

ORDER

This civil revision has been preferred by the applicants/defendants (LRs of original defendant 1-Bhagwat Prasad) challenging the order dated 16.02.2023 passed by Fourth Civil Judge, Senior Division, Tikamgarh in RCSA 30/2019, whereby applicants' application under Order 7 Rule 11 C.P.C. has been dismissed.

2. Learned counsel for applicants/defendants submits that instant suit filed by respondents/plaintiffs is not maintainable for challenging the orders of partition passed by Tahsildar, Baldevgarh on 30.08.2013, affirmed upto Board of Revenue vide order dated 13.11.2018, which is otherwise barred by limitation and deserves to be dismissed because of non-joinder of necessary

parties also. He also submits that the plaintiffs have also not paid requisite court fees but trial court has, without taking into consideration aforesaid aspects of the matter, committed illegality in dismissing the application under Order 7 Rule 11 C.P.C. In support of his submissions, learned counsel for the applicants/defendants placed reliance on the decisions in the cases of Ismail Khan & others Vs. Rafiq Khan & others **1982 RN 505 (HC)**, Shankarlal Vs. Bhanwarlal & others **1988 RN 356 (HC)**, and S.A No. **356/2016** (Sheela D/o Ramibai & another Vs. Bhagudibai & another) decided on **19.03.2019** and prays for allowing the civil revision.

3. Learned Counsel appearing for the respondent, supports the impugned order and prays for dismissal of the revision.

4. Heard learned counsel for the applicants/defendants and perused the record.

5. In the application filed under Order 7 Rule 11 C.P.C, the applicants have raised four objections viz., (i) there is defect of non-joinder of necessary parties; (ii) the suit is not maintainable; (iii) the plaintiff has not paid requisite court fees; and (iv) the suit is barred by limitation. Upon due consideration, all these objections are replied parawise, as under:-

(i) In the light of decision given by Hon'ble Apex Court in the case of Prem Lal Nahata & another Vs. Chandi Prasad Sikaria **(2007) 2 SCC 551**, the question of

non-joinder of parties to the suit, cannot be considered while deciding the application under Order 7 Rule 11 C.P.C.

(ii) The orders passed by revenue courts under section 178 of the M.P. Land Revenue Code, 1959 (in short “ the Code”) can very well be challenged before Civil Court, because there is no bar under Section 257 of the Code regarding filing of civil suit challenging such orders.

(iii) Perusal of plaint shows that the suit as framed does not appear to be barred by limitation, which is otherwise a mixed question of law and facts and cannot be considered while deciding the application under Order 7 Rule 11 C.P.C. especially when the plaintiffs have challenged the orders of revenue courts within the requisite period. In respect of partition proceedings, the last order was passed on 13.11.2018 and the suit has been filed on 09.03.2019.

(iv) Vide paragraph 15 of the plaint, the plaintiff has valued the suit at Rs.1,000/- for each of the relief(s) sought for declaration of title, partition and permanent injunction, and has paid requisite court fees, hence at the present stage, especially when the disputed land is revenue paying land, the question of non-payment of requisite court fees also cannot be considered while deciding the application under Order 7 Rule 11 C.P.C.

6. In view of the aforesaid discussion and factual scenario, the judgments relied upon by learned counsel for the applicants/defendants in the case

of Ismail Khan (**supra**), Shankarlal (**supra**), and Sheela (**supra**) are distinguishable on facts and do not help to the applicants.

7. Resultantly, declining interference in the impugned order, this civil revision fails and is hereby dismissed with cost of Rs.5,000/- (Rupees Five Thousand only) payable to the District Legal Services Authority, Tikamgarh, within a period of 30 days from today, otherwise trial Court shall be at liberty to recover the same from the applicants/defendants.

8. Misc. application(s), pending if any, shall stand closed.

(DWARKA DHISH BANSAL)
JUDGE

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