

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

**BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

ON THE 20th OF JULY, 2023

MISC. CIVIL CASE No. 1445 of 2023

BETWEEN:-

**SHUBHA MOTORS PVT. LTD MAHANADDA THR
DIRECTOR MAHESH KEMTANI S/O SHRI RADHA
KRISHNA KEMTANI, AGED ABOUT 60 YEARS,
OCCUPATION: BUSINESS MAHANADDA P.S.
MADAN MAHAL JABALPUR (MADHYA
PRADESH)**

.....APPLICANT

(BY SHRI QUAZI FAKHRUDDIN - ADVOCATE)

AND

**1. GOPALI BAIGA S/O LATE SHRI GANGA
BAIGA, AGED ABOUT 63 YEARS, GRAM JAMUA
PS SHOHAGPUR, DISTRICT (MADHYA PRADESH)**

**2. GYANI PRASAD GUPTA S/O SHRI SUNDAR
LAL GUPTA, AGED ABOUT 55 YEARS, R/O WARD
NO.6 BEHIND PANDAVNAGAR STADIUM
SHAHDOL POLICE STATION SHAHDOL DISTRICT
(MADHYA PRADESH)**

**3. ROBIN KHATWANI S/O SHRI
RAMCHANDRA KHATWANI, AGED ABOUT 40
YEARS, R/O MAHANADDA POLICE STATION
MADAN MAHAL JABALPUR DISTRICT (MADHYA
PRADESH)**

**4. SATYABHANU SINGH S/O SHRI HALKU
SINGH GOND, AGED ABOUT 60 YEARS, R/O
SILWADA WARD NO.10 DOGAON POLICE
STATION MANDLA DISTRICT (MADHYA
PRADESH)**

5. **DILGANJAN SINGH (NOW DECESED) THROUGH LRS. DHYUV SINGH S/O LATE SHRI DILGANJAN SINGH, AGED ABOUT 45 YEARS, RESIDENT OF CHAURI POLICE STATION PALI TEHSIL PALI DISTRICT UMARIYA (MADHYA PRADESH)**

6. **BILMATIYA D/O LATE SHRI DILGANJAN SINGH, AGED ABOUT 43 YEARS, RESIDENT OF CHAURI POLICE STATION PALI TEHSIL PALI DISTRICT UMARIYA (MADHYA PRADESH)**

7. **STATE OF MADHYA PRADESH THROUGH COLLECTOR SHAHDOL SHAHDOL (MADHYA PRADESH)**

.....**RESPONDENTS**

(NONE FOR THE RESPONDENTS)

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

ORDER

This application under Section 24 of the CPC has been filed for transfer of RCSA No.168/2018 from the Court of Civil Judge Junior Division, Shahdol to the competent Court at Jabalpur.

2. Learned counsel for the applicant submits that the applicant is facing hardship in conducting the proceedings pending in the Court of Shahdol because the applicant is an old man and is ailing from various diseases, due to which he is unable to travel and applicant company is having the registered office at Jabalpur.

3. In the application, several other grounds have also been raised for transfer. However, the learned counsel does not dispute that the property in respect of which the suit has been instituted is situate within the jurisdiction of Court at Shahdol. In support of his submissions, learned counsel placed reliance on the decision of Supreme Court in the case of

Shah Newaz Khan & Ors. Vs. State of Nagaland & Ors. **AIR 2023 SC 1338** and of Delhi High Court in Miss Pushpa Kapal Vs. Shri Shiv Kumar **ILR (1988) 1 Delhi**, so also on the provisions contained in Section 24 (5) of the C.P.C. Learned counsel further submits that in the case of Harshad Chimanlal Modi **(2005)7 SCC 791**, the supreme Court has not considered Section 24 (5) of the C.P.C., therefore, it is not applicable to the case in hand.

4. Heard learned counsel for the applicant and perused the plaint.
5. Apparently, the suit has been filed for declaration of title and for declaring the sale deed null and void alongwith other reliefs in respect of the immovable property, as described in para 3 and relief clause No.16 (a), situate in the Village Jamua, Tahsil Sohagpur, District Shahdol.
6. The relevant provisions contained in Section 16 of the C.P.C. in respect of institution of suit, are reproduced as under:-

"16. Suits to be instituted where subject-matter situate.- Subject to the pecuniary or other limitations prescribed by any law, suits,-

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.”

7. In the case of Harshad Chiman Lal Modi Vs. DLF Universal Ltd. and Another reported (2005) 7 SCC 791, the Supreme Court has held as under:-

“16. Section 16 thus recognises a well-established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. The proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on a well-known maxim "equity acts in personam", recognised by the Chancery Courts in England. The Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that the courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam i.e, by arrest of the defendant or by attachment of his property.”

8. In the light of the aforesaid decision of Supreme Court in the case of Harshad Chimanlal Modi (supra), it is clear that the Court at Jabalpur has no jurisdiction in respect of the property, which is situate in the jurisdiction of the Court at Shahdol.

9. As such, no case is made out for transferring the case No.RCSA No.168/2018 from District Shahdol to District Jabalpur.

10. Resultantly, this M.C.C. fails and is hereby **dismissed**.

11. Interim application (s), if any, shall stand dismissed.

(DWARKA DHISH BANSAL)
JUDGE

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