

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

BEFORE

JUSTICE SUJOY PAUL

ON THE 16th OF OCTOBER, 2023

MISC. PETITION No.6014 OF 2023

BETWEEN :-

1. **SHRI VIPIN KUMAR SAMAIYA S/O LATE VIMAL KUMAR SAMAIYA, AGED ABOUT 34 YEARS, OCCUPATION – BUSINESS R/O II FLOOR BLOCK NO.SFF-7, VIDYA SAGAR COMPLEX, TILAK BHUMI TALAIYA, JABALPUR (MP)**
2. **SHRI NITIN KUMAR SAMAIYA S/O LATE VIMAL KUMAR SAMAIYA, AGED ABOUT 31 YEARS, OCCUPATION – BUSINESS R/O II FLOOR BLOCK NO.SFF-7, VIDYA SAGAR COMPLEX, TILAK BHUMI TALAIYA, JABALPUR (MP)**
3. **SMT. MUNENDRA KUMARI SAMAIYA S/O LATE VIMAL KUMAR SAMAIYA, AGED ABOUT 62 YEARS, OCCUPATION – LANDLADY R/O II FLOOR BLOCK NO.SFF-7, VIDYA SAGAR COMPLEX, TILAK BHUMI TALAIYA, JABALPUR (MP)**

.....PETITIONER

***(BY MR. SANJAY AGRAWAL – SR. ADVOCATE WITH MR. YASH SONI -
ADVOCATE)***

AND

SMT. VARSHA SAMAIYA W/O SHRI SHOBHIT SAMAIYA, AGED ABOUT 35 YEARS, OCCUPATION LANDLADY, D/O LATE VIMAL KUMAR SAMAIAYA R/O KHUSIPLAZA COMPLEX, NAPIER TOWN, JABALPUR (M.P.)

.....RESPONDENTS

(BY MR. S. K. JAIN – ADVOCATE)

This writ petition coming on for orders this day, JUSTICE SUJOY PAUL passed the following :

ORDER

This petition filed under Article 227 of the Constitution of India takes exception to the order dated 21/03/2023 whereby application preferred by the petitioner/defendant under Order XIV Rule 5 of CPC was dismissed.

2. Briefly stated, the respondent/ plaintiff filed a suit for partition and *mesne* profit which was registered as RCS-27-A/2013. After completion of pleadings, the Court below framed issues on 10/12/2012. The defendant then filed an application under Order 7 Rule 11 of CPC for rejection of plaint which was decided by the Court below on 07/02/2020 (Annexure P/6). Thereafter, petitioners/defendants filed an application under Order XIV Rule 5 of CPC (annexure P/7) on 24/11/2022 and prayed for framing of two issues - (i) Whether plaintiff has properly valued his suit. (ii) Whether, suit filed by plaintiff is barred by pecuniary jurisdiction.

3. Shri Sanjay Agrawal, learned Senior Advocate submits that the Court below has rejected the said application solely on the ground that there is no pleading/ foundation in this regard in the written statement.

The additional issues so proposed by application dated 24/11/2022 are purely legal in nature and therefore, whether or not said ground is taken in the pleadings of written statement, the Court below is bound to consider the same in the light of judgment of Gwalior Bench reported in **1986 MPLJ 597 Dilipsingh Nathusingh vs. Malam Singh Dilip Singh**. The Court below has erred in disallowing the said application.

4. Shri S. K. Jain, learned counsel for the respondent supported the order and submits that the issues are framed on the basis of rival pleadings and in absence of any pleading in the written statement, the Court below has not committed any error in rejecting the said application. The evidence of plaintiff has begun and at this belated stage, the Court below has rightly disallowed the said application.

5. The parties confined their arguments to the extent indicated hereinabove and also informed that application filed by petitioner under Order VII Rule 11 of CPC was also dismissed by the Court below.

6. I have heard the parties at length and perused the record.

7. Before dealing with the rival contentions, it is apposite to consider Order XIV Rule 1 CPC, which reads as under :-

“Issue arise when a material proposition of fact or law is affirmed by the party and denied by the other.”

8. The core issue is whether the Court below was justified in holding that in absence of rival pleadings, no additional issues are required to be framed. This point is no more *res integra*. The Privy

Council wayback in **A.I.R. (37) 1950 Privy Council 68 (Kanda and Ors. Vs. Waghu)** opined as under :-

“ 11.In *Eshenchunder Singh v. Shamachurn Bhutto*, 11 M.I.A 7 at p.20:(16 W.R. 57(P.C)) Lord Westbury described it as an absolute necessity that the determinations in a cause should be founded upon a case **to be found in the pleadings** or involved in or consistent with the case thereby made. The course decided upon by the learned District Judge offended against this principle and their Lordships consider that he was rightly overruled.”

(Emphasis supplied)

9. The Apex Court has drawn curtains on this aspect in the case of **Kalyan Singh Chouhan Vs. C.P. Joshi, AIR 2011 SC 1127** it was poignantly held as under :-

“**Therefore, it is neither desirable nor required for the court to frame an issue not arising on the pleadings.** The Court should not decide a suit on a matter/point on which no issue has been framed (Vide : *Raja Bommadevara Venkata Narasimha Naidu & Anr. v. Raja Bommadevara Bhashya Karlu Naidu & Ors.*, (1902) 29 Ind App 76 (PC); *Sita Ram v. Radha Bai & Ors.*, AIR 1968 SC 535; *Gappulal v. Thakurji Shriji Dwarkadheeshji & Anr.*, AIR 1969 SC 1291; and *Biswanath Agarwalla v. Sabitri Bera*, (2009) 15 SCC 695 : (2009 AIR SCW 7425)).”

(Emphasis supplied)

10. Since point involved is squarely covered by the judgment of Supreme Court, the Single Bench judgment of this Court in **Dilip Singh Nathu Singh (supra)**, fades into insignificance.

11. In the light of aforesaid judgments, it is crystal clear that the Court below has taken a plausible view that in absence of pleadings, it is not necessary / desirable to frame additional issues. The scope of interference under Article 227 of the Constitution is limited. Interference can be made if order impugned suffers from palpable procedural impropriety or manifest illegality. Another view is possible, is not a ground of interference. This Court in exercise of jurisdiction under Article 227 of the Constitution is not required to act as a bull in a china shop (*See: Shalini Shyam Shetty and another vs. Rajendra Shankar Patil (2010) 8 SCC 329*).

12. In the opinion of this Court, the Court below has passed the impugned order in consonance with the principles flowing from Order XIV of C.P.C. In absence of any ingredients on which interference can be made, interference is declined.

13. Petition is **dismissed**.

(SUJOY PAUL)
JUDGE