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

**BEFORE
HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

**&
HON'BLE SHRI JUSTICE VISHAL MISHRA**

ON THE 13th OF JUNE, 2023

WRIT APPEAL No. 694 of 2023

BETWEEN:-

1. **SMT. SHYAMVATI BAI W/O LATE SHRI PYARE SINGH RATHORE, AGED ABOUT 75 YEARS, R/O VILLAGE KHIRSARI POST OFFICE CHANTA DISTRICT DINDORI (MADHYA PRADESH)**
2. **BHOLA SINGH S/O LATE SHRI PYARE SINGH, AGED ABOUT 55 YEARS, R/O WARD NO. 12, OLD DINDORI, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
3. **NIHAL SINGH S/O LATE SHRI PYARE SINGH, AGED ABOUT 50 YEARS, R/O WARD NO. 12, OLD DINDORI, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
4. **MAHENDRA SINGH S/O LATE SHRI PYARE SINGH, AGED ABOUT 48 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, DISTRICT DINDORI (MADHYA PRADESH)**
5. **SEHDEV SINGH S/O LATE SHRI PYARE SINGH, AGED ABOUT 45 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, DISTRICT DINDORI (MADHYA PRADESH)**
6. **NAKUL SINGH S/O LATE SHRI PYARE SINGH, AGED ABOUT 40 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, DISTRICT DINDORI (MADHYA PRADESH)**
7. **MUNNA ALIAS VIJENDRA S/O LATE SHRI GAPPU ALIAS GANESH RATHORE, AGED ABOUT 45 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, POLICE STATION DINDORI TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**

8. **SMT. DAYAWATI BAI W/O LATE SHRI GAPPU ALIAS GANESH RATHORE, AGED ABOUT 65 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, POLICE STATION DINDORI TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI ASHOK LALWANI- ADVOCATE)

AND

1. **CHATRA SINGH S/O LATE SHRI DUALAL RATHORE, AGED ABOUT 58 YEARS, R/O VILLAGE KHIRSARI POST OFFICE CHANTA POLICE STATION DINDORI, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
2. **SMT. KUSUM BAI W/O CHATRA SINGH RATHORE, AGED ABOUT 55 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, POLICE STATION DINDORI, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
3. **CHINTAMANI S/O LATE SHRI DUALAL RATHORE, AGED ABOUT 50 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, POLICE STATION DINDORI, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
4. **SMT. JAMOTRI BAI W/O CHINTAMANI, AGED ABOUT 45 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, POLICE STATION DINDORI, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
5. **SMT. SAVITRI BAI W/O RAJKUMAR RATHORE, AGED ABOUT 55 YEARS, R/O VILLAGE SARHARI TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
6. **KARAN SINGH S/O LATE SHRI BHONDU SINGH ALIAS MAANSINGH RATHORE, AGED ABOUT 55 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, POLICE STATION DINDORI, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
7. **SMT. MUNNI BAI W/O LATE SHRI KALLU SINGH RATHORE, AGED ABOUT 55 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, POLICE**

**STATION DINDORI, TEHSIL AND DISTRICT
DINDORI (MADHYA PRADESH)**

8. **PAWAN KUMAR S/O LATE SHRI KALLU SINGH RATHORE, AGED ABOUT 32 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, POLICE STATION DINDORI, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
9. **RAMU ALIAS RAMKUMAR S/O LATE SHRI KALLU SINGH RATHORE, AGED ABOUT 28 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, POLICE STATION DINDORI, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
10. **SMT. JAYANTI BAI D/O LATE SHRI KALLU SINGH RATHORE, AGED ABOUT 30 YEARS, R/O VILLAGE MADIARAS, POST OFFICE MADIARAS, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
11. **GEET SINGH S/O LATE SHRI BHONDU SINGH ALIAS MAAN SINGH RATHORE, AGED ABOUT 52 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, POLICE STATION DINDORI, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
12. **NIRMAL SINGH S/O LATE SHRI BHONDU SINGH ALIAS MAAN SINGH RATHORE, AGED ABOUT 46 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, POLICE STATION DINDORI, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
13. **JAY SINGH S/O LATE SHRI BHONDU SINGH ALIAS MAAN SINGH RATHORE, AGED ABOUT 40 YEARS, R/O VILLAGE KHIRSRI, POST OFFICE CHANTA, POLICE STATION DINDORI, TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
14. **SMT. RADHA BAI W/O SHIKHAR CHAND RATHORE, AGED ABOUT 52 YEARS, R/O VILLAGE CHATUA, POST OFFICE CHANTA, DISTRICT DINDORI (MADHYA PRADESH)**
15. **SMT. JANKI BAI W/O BUDDHU RATHORE, AGED ABOUT 42 YEARS, R/O VILLAGE KUKARMATH POST OFFICE KUKARMATH TEHSIL AND DISTRICT DINDORI (MADHYA PRADESH)**
16. **THE STATE OF MADHYA PRADESH, THROUGH COLLECTOR, DINDORI DISTRICT DINDORI**

(MADHYA PRADESH)

.....RESPONDENTS

(SHRI ASHOK KUMAR JAIN- ADVOCATE FOR RESPONDENTS NO. 1 TO 15)

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This appeal coming on for orders this day, the Court passed the following:

ORDER

This appeal is filed with a prayer to set aside the order dated 25.04.2023 passed in Review Petition No. 292 of 2023. In terms of the order passed in review petition, the same was dismissed.

2. The miscellaneous petition was filed by the plaintiffs being aggrieved by order dated 01.11.2022 passed in RCSA No.32A of 2015 by the learned Second Civil Judge, Senior Division, Dindori in terms whereof the objection raised by the plaintiffs as to the admissibility of the Batwaranama on the ground that it is not registered and, therefore, in terms of Section 17 of the Registration Act is not admissible in evidence, was rejected. Questioning the same, the instant miscellaneous petition was filed under Article 227 of the Constitution of India. The learned Single Judge by order dated 14.03.2023 dismissed the miscellaneous petition. Aggrieved by the same, the plaintiffs filed the Review Petition No. 292 of 2023 under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (for short "the CPC") seeking to review the order passed by the learned Single Judge in exercise of the powers under Article 227 of the Constitution of India. The review petition was dismissed. Thereafter the instant writ appeal is filed.

3. The office has raised an objection with regard to the maintainability of the appeal. The respondents support the office objection on the ground that the writ appeal is not maintainable against the order which is originally passed under

Article 227 of the Constitution of India and thereafter the review petition was dismissed.

4. Shri A.K. Jain, learned counsel appearing for the respondents No. 1 to 15 pleads that against the order passed under Article 227 of the Constitution of India, the writ appeal would not be maintainable.

5. The learned counsel for the appellants disputes the same. He contends that the power exercised by the court in dismissing the review petition is the power under Article 226 of the Constitution of India and therefore, the writ appeal is maintainable against the order passed under Article 226 of the Constitution of India. In support of his case he relies on the judgment of the Hon'ble Supreme Court in the case of Shivdeo Singh and others Vs. State of Punjab and others reported in AIR 1963 SC 1909 with reference to para 8.

6. We have considered the contentions. Para 8 of the aforesaid judgment reads as follows:-

"8. The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which in effect, reviews his prior order. Learned counsel contends that Article 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla' J. entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J."

7. In the facts of the given case, the learned Single Judge entertained the second writ petition filed under Article 226 of the Constitution of India seeking to recall the earlier order passed under Article 226 of the Constitution of India. Therein a contention was raised that Article 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order passed under Article 226 of the Constitution of India is without jurisdiction. The said contention was negated and it was held that there is nothing in Article 226 of the Constitution of India to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction in order to prevent miscarriage of justice. It is on this ground that the said judgment was delivered. However, the facts contained herein are quite different. This is not a petition arising out of an order passed by the learned Single Judge under Article 226 of the Constitution of India. On the contrary, it is an order passed on an application filed by the appellants under Order XLVII Rule 1 of the CPC. It is that power that the court has exercised while passing the impugned order.

8. The contention of the appellants that the same has to be read as an inherent power of the court which is exercised under Article 226 of the Constitution of India is quite alien. We are unable to accept the contention that when a petition is filed under Order XLVII Rule 1 of the CPC and the court has passed an order in exercise of power of the said rule, how can it be presumed that the order has been passed under Article 226 of the Constitution of India.

9. The reliance placed on the aforesaid judgment of the Hon'ble Supreme Court, in our considered view, is fully misplaced. Therein the second writ petition was filed under Article 226 of the Constitution of India and it is that power which the learned Single Judge exercised. Therefore, relying on the said

finding of the Hon'ble Supreme Court it cannot be contended herein that even though it is a review petition under Order XLVII Rule 1 of the CPC, the court has actually exercised power under Article 226 of the Constitution of India. We are unable to accept such contention. It belies the very fundamentals of law. The power exercised by the learned Single Judge is obviously the power under which the application has been filed under Order XLVII Rule 1 of the CPC. Therefore, such a contention cannot be accepted.

10. Under these circumstances, we do not find any ground to hold that the appeal is maintainable. For all these reasons, the appeal is dismissed on the ground of maintainability.

(RAVI MALIMATH)
CHIEF JUSTICE

MSP



(VISHAL MISHRA)
JUDGE