

In the Court of Sub-Judge, Teghra

Title Suit No. 98 of 2020

Raushan Kumar Vs. Mahesh Kumar Mangotiya & others

Order S. No.	Date of Order of proceeding	Order with signature of the Court	Office action taken with date
1	2	3	4
	28.11.2024 (1)	<u>Order on petition dt. 08.12.2022 U/O VII Rule 11</u> <u>(A) Introduction :</u> 1. Parties are present, record has been produced for order on <i>the petition of the defendants dated 08.12.2022 under Order VII Rule 11 read with section 151 of the Code of Civil Procedure (hereinafter referred to as CPC) raising preliminary objection on the maintainability of the suit on the basis of the cause of action and the provisions under Order 1 Rule 8 of CPC.</i> The rejoinder to this petition has been filed on behalf of plaintiff on 23.02.2023. <u>(B) Defendant's Petition :</u> 2. It has been submitted by the Learned counsel Sri Sanjeev Kamal for the petitioner (Defendant No. 1) that the defendant no. 1 has appeared and filed the instant petition without filing his Written Statement (hereinafter referred to as WS). The plaintiff has wrongly filed the present suit without any cause of action and from mere perusal of the pleading, it would also be transpired that the suit is suffering from several laws also. The present suit is not maintainable under the provisions laid down in Order 7 Rule 11 of CPC. Para 4 of the plaint clearly speaks that the present suit is being filed under representative capacity. Para 1 clearly states about several purchasers and description of three sale deeds are given and the relief has also been sought for on behalf of several purchasers. But these purchasers are not made parties here in this suit. From perusal of the order sheet, it	

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would be clear that the plaintiff neither filed any petition for permission of the court to file a suit under representative capacity nor notice have given to all concern parties which is mandatory provision under **Order 1 Rule 8 of CPC**. One person cannot own the interest of several people without their permission. One of the purchaser Chandan Kumar during the proceeding before the D.C.L.R, Teghra in mutation appeal no. 06/2022 has been filed an affidavit denying the right and title of his vendor and showered that he has wrongly purchased the land from wrong person. He has also admitted the right, title and possession of this defendant. So, the present suit is clearly barred under **Order 1 Rule 8 of CPC**.

3. It is further submitted that the cause of action as alleged by the plaintiff is joint cause of action for which other purchasers are not available here to confirm the same. So, the present suit is also hit by **Order 7 Rule 11 of CPC** having no cause of action. The defendant no. 2 has already died in 2002 and the present suit is filed against dead person. The defendant no. 3 & 4 are residing at Surat and their present address is wrong. Under these circumstances, please to reject the plaint as not maintainable.

(C) The Plaintiff's Objection (Rejoinder)

4. Learned Counsel **Sri Lalan Kumar Jha** on behalf of the plaintiff has ardently opposed the prayer of the petitioner (defendant) by way of rejoinder filed on 23.02.2023 and submitted that the petition under reference as filed by the defendant dated 08.12.2022 is not maintainable and is fit to be rejected outright. The defendant no. 1 has not legally appeared in the suit and has not filed WS. The petition of the defendant is

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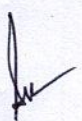
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premature. The cause of action has been clearly mentioned in para 17 & 18 of the plaint and suit has been admitted after full verification. At this stage no petition regarding maintainability of the suit can be filed. The defendant have to file WS. In order to confuse the court, frivolous petition has been filed by the defendant no. 1 and it cannot be considered in the absence of his pleading. The petition filed by the defendant no. 1 no merits. Therefore, the petition filed by defendant no.1 may be rejected outright.

(D) Analysis, Appreciation & Finding :

5. Upon hearing both sides and perusing the **record**, it appears that the present suit has been filed by the plaintiff for declaring that plaintiff and other purchaser detailed in para 1 of the plaint have got perfect right, title and interest over suit land which has been mentioned in Schedule-I of the plaint. It has been clearly stated by the plaintiff in para 4 of the plaint that the present plaintiff is filing this suit in his personal capacity as well as in representative capacity representing other purchasers who are named in para-1 of this plaint. It has been mentioned in para 1 of the plaint that plaintiff Raushan Kumar along with Ram Babu Rai, Arbind Kumar Choudhary, Mahesh Kumar Pathak, Ravish Kumar Singh, Chandan Kumar purchased lands through registered sale deeds no. 4514, 4515 & 4516 dated 18.11.2020. further it has been mentioned in para 5 that the present suit is being filed by

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the present plaintiff representing the claim of other purchasers also. It has been mentioned in para 7 of the plaint that present plaintiff and other purchasers are jointly cultivating utilizing the land and present plaintiff in-charge of other purchasers also and the total land is utilized by the plaintiff and other purchasers jointly. The relief has also been sought for on behalf of other purchasers along with the plaintiff. Undoubtedly the plaintiff is representing the interest of other purchasers and is for the benefit of all the persons so interested. As per provisions of Order -1 Rule 8 of the C.P.C. -

6.

Order -1 Rule 8 : One person may sue or defend on behalf of all in same interest -

(1) Where there are numerous persons having the same interest in one suit, -

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiffs expense, give notice of the institution of the suit to all persons so interested either by personal service, or, where, by reason of the number of persons or any other

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cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4).

(5).

(6).

Explanation...

(Emphasis Supplied)

7.

In the matter of ***Saraf and Swarnkar Samiti, Morar Vs. Munnal Lal & Others [AIR 1973 MADHYA PRADESH 216]***, the Hon'ble Madhya Pradesh High Court observed as follows –

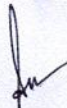
"8. The general rule is that all persons interested in a suit ought to be joined as parties to it. Rule 8 of Order 1 of the Code of Civil Procedure forms an exception to this general rule inasmuch as it provides that where numerous persons have the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested.

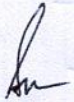
9. The essential condition for the applicability of Order 1, Rule 8 of the Code of Civil Procedure is that the parties must be numerous and there must be community of interest between them. If these conditions are fulfilled permission under Order 1, Rule 8 of the Code of Civil Procedure can be granted vide

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<u>Contd....</u> 28.11.2024 (6) 	<i>Gangavishnu v. Nathulal 1956 MBLJ 1384 = (AIR 1957 Madh B 173). The rule is enacted to avoid inconvenience and delay in the hearing of a suit where the parties are numerous but have the same interest in the suit, and. therefore, it must be liberally construed in order to achieve the purpose of the rule."</i> (Emphasis Supplied) 8. As per the provisions as aforesaid the rules regarding permission and notice is required in both conditions that in a case where the plaintiffs are filing the suit in a representative character (Sue) or impleading defendants in their representative capacity (be sued). Explaining the meaning of term "Sue or be sued, or may defend", in the matter of Saraf and Swarnkar Samiti, Morar v. Munnal Lal & Others [AIR 1973 MADHYA PRADESH 216], it has been held that "11. ...the words 'sue or be sued or defend' occurring therein that it gives option to the plaintiff on the one hand to sue some of the defendants in their representative capacity as representing the interest of the whole body. On the other hand if the plaintiff chooses to implead large number of persons having the same interest in the suit it gives option to some of the defendants to seek permission to defend on behalf of or for the benefit of all." 9. One person cannot own the interest of several people without their permission and other purchasers are not made parties here in this suit. The plaintiff neither filed any
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petition for permission of the court to file a suit under representative capacity nor notice have given to all concern parties which is mandatory provision under **Order 1 Rule 8 of CPC**. Hence in this case also steps for permission and notice ought to have been taken by the plaintiff. So far as the contention of the defendant no.1 that the suit must be dismissed on this score alone is not tenable because in catena of cases it has been held that the rules of procedures are not mistress but handmaid of justice and a lis must be decided on its merit. The Hon'ble Supreme Court in the matter of **Krishnan Vasudevan & Others Vs. Shareef & Others [(2005) 12 SCC 180]** held that "*Order 1 Rule 8 CPC does not prescribe any stage at which the application can be filed. In our opinion the trial court ought to have heard and decided the application on its own merits without regard to the stage at which it was filed.*" Hence the plaintiff has still an option to comply the provisions of Order 1 Rule 8 of CPC.

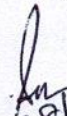
- 10.** The cause of action has been mentioned in para 17 of the plaint and the cause of action is not an issue in this case.

(E) Conclusion & Order :

- 11.** Consequently, having regard to the facts and circumstances of this case as well as the discussion as mentioned above, ***the petition of the defendants dated 08.12.2022 under Order VII Rule 11 read with section 151 of the CPC raising preliminary objection on the maintainability of the suit is hereby rejected.*** The plaintiff is directed to comply the provisions of Order 1 Rule 8 of CPC.

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(8)12. put up the record on **30.01.2025** for further proceeding.

28/11/2024.
(Sushil Prasad)
Sub-Judge
Teghra (Begusarai)परचार्
28.11.24

प्रतिवादी सं-1 की ओर से एक कांटेन उनकी ओर
से दिनांक 07.12.22 को 7 Rule 11 के साथ
संलग्न करके छोड़ा गया है और यह प्रार्थना कि
न्यायाधीश कांटेन-7 Rule 11 के तहत कांटेन पर
निर्णय के समय इसकी विचार में लिया जाए।
समय ही List of document के साथ मांगीपत्र-
मांगपत्र, पता के Appeal no. 282/1950 का
निर्णय ही व्यापार प्रती एवं शुद्ध मांगपत्र, ~~कांटेन~~
वैधवाप का Sale certificate एवं उत्तराधिकारी
संबंधी संपत्ति का विवरण दिया गया है। इसे अनिवार्य
पारखें।


अग्र (मि. 18/11/2024)