



ORDER BELOW EXH.87 IN R.C.S.NO.82/2019

(CNR No. MHWS02000674-2019)

Laxminarayan Somani (deceased) Thr. his L.R. Nandkishor Somani Vs. Suresh Somani & Ors.

1] Applicant No.1 Dilip s/o. Shankarlal Heda & applicant No.2 Rahul s/o. Rameshchandra Lahoti have filed this application under Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908 (for short 'C.P.C.') praying that they be impleaded as defendant Nos.14 & 15 *respectively* in the suit.

2] **Contents of this application, in nutshell, are as follows :-**

The plaintiff has filed the present suit for declaration & perpetual injunction in respect of -

- i) the land admeasuring 00 H. 81 Are out of Block No.447 total admeasuring 03 H. 65 Are situated within the jurisdiction of village Ansing, Tq. & Dist. Washim, more particularly described in para No.1(a) of the plaint (for short 'said land'), and -
- ii) lands mentioned in para Nos.1(b) & 1(c) of the plaint.

3] Applicants have further stated that they are bonafide purchasers of the said land as they have purchased it from partners of the Firm 'Mauli Developers' by way of registered sale deed dated 01/09/2023 for consideration of Rs.1,25,00,000/-,

and however, they were put in possession of the said land on dated 01/09/2023 itself. Applicants have, thus, stated that they are owners & possessors of the said land.

4] It is, thus, contention of applicants that they have right & interest in the said land & therefore, they are necessary parties for decision of the suit. According to them, if this application is not allowed, they will suffer irreparable loss. With this, applicants have prayed that this application be allowed.

5] The plaintiff has filed his say to this application vide Exh.88. He has stated that the sale deed dated 01/09/2023 is hit by Section 52 of the Transfer of Property Act, 1882. According to the plaintiff, applicants have no title to the said land as the transfer dated 01/09/2023 is fraudulent. The plaintiff has further stated that there is no satisfactory & convincing ground for impleading applicants in the suit. He has, however, stated that applicants are not in possession of the said land. With this, the plaintiff has prayed for rejection of this application.

6] I have heard Ld. Advocate Mr. Belokar for applicants & Ld. Advocate Mr. Deshmukh for the plaintiff at considerable length. I have also gone through the record of the suit.

7] Ld. Advocate Mr. Deshmukh for the plaintiff has placed his reliance upon the judgment delivered in the case of Ajay

Dabra Vs. Pyare Ram & Ors. with Ajay Dabra Vs. Sunder Singh & Anr., reported in AIR 2023 SC 698, wherein it has been held by Hon'ble Supreme Court in para Nos.14, 16 & 17 as under -

14. The Trial Court dismissed the suits of the plaintiff primarily on grounds that getting permission from the State Government was an essential condition, which had not been fulfilled by him as per Section 118 of the Himachal Pradesh Tenancy & Land Reforms Act, 1972 (for short '1972 Act') and under the facts and circumstances of the case, the assignment in terms of the plaintiff was not proper and valid.

16. In the present case the assignment is not valid as there was no prior consent or approval of the seller before the assignment. In the absence of such a condition and in lieu of the fact that before assignment of its rights to the plaintiff/appellant herein no permission of the seller was obtained, there was no question of granting a decree of specific performance in favour of the plaintiff. Consequently, this is not a case which calls for our interference.

17. We may here add that the whole purpose of Section 118 of the 1972 Act is to protect agriculturists with small holdings. Land in Himachal Pradesh cannot be transferred to a non- agriculturist, and this is with a

purpose. The purpose is to save the small agricultural holding of poor persons and also to check the rampant conversion of agricultural land for non-agricultural purposes. A person who is not an agriculturist can only purchase land in Himachal Pradesh with the permission of the State Government. The Government is expected to examine from a case to case basis whether such permission can be given or not. In the present case, it thought it best, not to grant such a permission. However, the purpose of the transfer remains the same, which is a non-agricultural activity. By merely assigning rights to an agriculturist, who will be using the land for a purpose other than agriculture, would defeat the purpose of this Act. In the case of Ashok Madan and another Vs. State of H.P. and other 9, the Himachal Pradesh High Court had laid down the following important observation with respect to Section 118 of the 1972 Act :

"12. The law is, therefore, clear that merely the nomenclature or the title of the document will not determine what are the rights created by the document. The intention of the parties must be gathered on a combined reading of all the documents and the behaviour of the parties in the manner in which they treated the

document. Section 118 was introduced with a view to restrict the transfer of land in favour of non-agriculturist except to specified persons as contained in the Section itself. The purpose behind it was that the economically advantageous class does not take undue advantage of the small agriculturists by purchasing their small holdings. The provision was introduced as rich persons who were not agriculturists were purchasing 2011 SCC On-Line HP 3885 agricultural land in Himachal Pradesh at high price exploiting the local Himachali people. However, the section itself provided that in special cases permission can be granted for transfer of land to non-agriculturist. The constitutional validity of this Section was upheld in Smt. Sudarshana Devi Vs. Union of India, ILR 1978 HP 355.”

8] Reverting back to the suit at hand, I would like to mention that the plaintiff has stated in his reply Exh.88 that applicants are not in possession of the said land. On the contrary, applicants have stated in this application that on day of sale deed dated 01/09/2023 itself, they were put in possession of the said land. Therefore, whether the plaintiff is in possession of the said land is fact in issue. It is apposite to note

that the facts of the case law cited *supra* relates to the effect of transfer of the land to non-agriculturist without obtaining requisite permission. It is pertinent to note that the case law cited on behalf of the plaintiff is not in respect of addition of parties under Order 1 Rule 10 (2) of the C.P.C. Therefore, I say, with all respect, that ratio laid down in case law cited *supra* is not helpful to the plaintiff. In my considered view, the presence of applicants before the Court is necessary to enable the Court effectually & completely to adjudicate upon & settle all questions involved in the suit. However, it is pertinent to note that if this application is allowed, no prejudice will be caused to the plaintiff. Therefore, I have no hesitation to hold that this application deserves to be allowed. With this, I proceed to pass the following order -

ORDER

- 1] Application Exh.87 is allowed.
- 2] The plaintiff shall implead in the plaint the applicant No.1) Dilip s/o. Shankarlal Heda & applicant No.2) Rahul s/o. Rameshchandra Lahoti as defendant Nos.14 & 15 *respectively* till next date, and shall supply copies of the amended plaint as early as possible.
- 3] Thereafter, suit summons be issued to proposed defendant Nos.14 & 15.

- 4] No order as to costs.
- 5] Parties to the suit shall take note of this order.

(Dictated & pronounced in the open Court)

Washim.

Date:- 25/11/2024

(S. S. Ubale)

Civil Judge (Sr. Div.), Washim.

CERTIFICATE

I affirm that the contents of this PDF file Issues are same word to word, as per original Issues.

- 1) Name of Stenographer :- S. P. Kale (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Washim.
- 3) Date :- 25/11/2024
- 4) Order signed by the :- 25/11/2024
presiding officer on
- 5) Order uploaded on :- 27/11/2024