

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 24th OF AUGUST, 2022

WRIT PETITION NO. 2775 OF 2014

Between:-

1. **HAR NARAYAN DWIVEDI S/O LATE SHRI
GAYA PRASAD DWIVEDI, AGE 75 YEARS,
R/O C-73, GOVINDPURI, THATIPUR,
GWALIOR (MADHYA PRADESH) –
DELETED -**

LRs OF HAR NARAYAN DWIVEDI -

- (A) **SMT. SUMAN DWIVEDI W/O LATE SHRI
HAR NARAYAN DWIVEDI, AGE 75
YEARS, OCCUPATION HOUSEWIFE, R/O
C-73, GOVINDPURI, GWALIOR (MADHYA
PRADESH)**
- (B) **RAVI KUMAR DWIVEDI S/O LATE SHRI
HAR NARAYAN DWIVEDI, AGE 54
YEARS, OCCUPATION: GOVT. SERVICE
R/O 2/11, NEW 36, F-TYPE QUATER, MATA
MANDIR, NEAR ANJALI COMPLEX, T.T.
NAGAR, BHOPAL (MADHYA PRADESH)**
- (C) **SANTOSH DWIVEDI S/O LATE SHRI HAR
NARAYAN DWIVEDI, AGE 48 YEARS,
OCCUPATION : BUSINESS, R/O C-73
GOVINDPURI, GWALIOR (MADHYA
PRADESH)**
- (D) **SMT. ARCHANA TRIPATHI W/O SHRI
PRAVEEN TRIPATHI, D/O LATE SHRI
HAR NARAYAN DWIVEDI, AGE 51
YEARS, OCCUPATION : GOVT. SERVICE,
R/O GANGOL PANDIT BAADI
GAAZIAWALA DEHRADUN
(UTTARAKHAND)**

- (E) SMT. VANDANA PANDEY W/O SHRI VIVEK PANDEY, D/O LATE SHRI HAR NARAYAN DWIVEDI, AGE 49 YEARS, OCCUPATION : HOUSEWIFE, R/O 551, USHA NAGAR, NEAR SHANI DEV MANDIR, INDORE (MADHYA PRADESH)
- (F) SMT. RACHNA DUBEY W/O SHRI ASHUTOSH DUBEY D/O LATE SHRI HAR NARAYAN DWIVEDI, AGE 40 YEARS, OCCUPATION : PRIVATE SERVICE, R/O B-601, MARBEL CRISE, KHARADI, PUNE

2. SMT. UMA MISHRA W/O LATE SHRI KISHANLAL MISHRA
3. RAJEEV MISHRA S/O LATE SHRI KISHANLAL MISHRA
4. SANJEEV MISHRA S/O LATE SHRI KISHANLAL MISHRA

ALL R/O B-3, SUDAMA NAGAR, INDORE (MADHYA PRADESH)

NO. 2 TO 4 THROUGH POWER OF ATTORNEY SHRI HAR NARAYAN DWIVEDI S/O LATE SHRI GAYA PRASAD DWIVEDI, AGE 75 YEARS, R/O C-73, GOVINDPURI, THATIPUR, GWALIOR (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI A.V. BHARDWAJ - ADVOCATE)

AND

1. SMT. KULWANT KAUR SONDHI WD/O LATE SHRI RAJENDRA SINGH SONDHI, AGE 57 YEARS, OCCUPATION: SERVICE (DELETED)
2. KU.TRIVENI D/O LATE SHRI RAJENDRA SINGH SONDHI, AGE 29 YEARS
3. KU. JASLEEM SONDHI D/O LATE SHRI

**RAJENDRA SINGH SONDHI, AGED
ABOUT 26 YEARS,**

**ALL R/O B-4, RAJENDRA PRASAD
COLONY, TANSEN ROAD, GWALIOR
(MADHYA PRADESH)**

- 4. RASHTRIYA ADARSH GRAH NIRMAN
SAHAKARI SANSTHA MARYADIT
KAMAL SINGH KA BAGH, LASHKAR,
GWALIOR THROUGH PRESIDENT SMT.
SATYAVATI TOMAR W/O SHRI DWARIKA
SINGH R/O KEDARPURI KOTHI FARM
HOUSE, JHANSI SHIVPURI LINK ROAD,
IN FRONT OF SANT AASHARAM BAPU,
GWALIOR (MADHYA PRADESH)**
- 5. PURUSHOTTAM S/O SHRI RAMCHARAN,
R/O LOHIYA BAZAR, LASHKAR,
GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI ABHISHEK SINGH BHADORIYA – ADVOCATE FOR
RESPONDENTS NO. 2 AND 3)
(SHRI SIDDHARTH SHARMA – ADVOCATE FOR RESPONDENT
NO. 5)**

*This petition coming on for hearing this day, the Court passed the
following:*

ORDER

This petition under Article 226 of the Constitution of India has been filed against the order dated 22.04.2014 passed First Civil Judge, Class-I, Gwalior in Case No.54-A/2013, by which the applications filed by the respondents/plaintiffs under Order 1 Rule 10 of CPC and under Order 6 Rule 17 of CPC have been allowed.

2. It is submitted by the counsel for the petitioners that the

respondents No. 1, 2 and 3 have filed a suit for declaration of title and permanent injunction. The said suit was decreed by judgment and decree dated 08.04.2005 passed by 6th Civil Judge, Class-I, Gwalior in Civil Suit No.27-A/1998. The said judgment and decree was put to challenge by Kishanlal Mishra (petitioners No. 2 to 4 are the legal representatives of Late Kishanlal Mishra). Regular Civil Appeal No. 31-A/2005 filed by Late Kishanlal Mishra was allowed by order dated 24.12.2005 and the matter was remanded back. The order of remand was challenged by the respondents No. 1 to 3 by filing M.A. No.178/2006 which was finally disposed of by order dated 20.02.2009 with the following observations:-

It also appears that certain observations were made by the Appellate Court. It is made clear that those observations shall not come in the way of the Court while deciding the case on the basis of the evidence in accordance with law afresh.

In view of the aforesaid, the appeal is disposed of. The parties who are represented through counsel are directed to appear before the trial court on 26th of March, 09. The trial court shall issue notice to un-represented parties. No costs.

3. It is submitted that thereafter respondents No. 1 to 3 filed an application under Order 1 Rule 10 of CPC for impleading the petitioner No. 1 as defendant. Another application under Order 6 Rule 17 of CPC was also filed alleging that petitioner No. 1 was the general power of attorney holder on behalf of Harnarayan Dwivedi and had also appeared as a witness for and on behalf of defendant Kishanlal Mishra. On 28.07.2013 at about 10:00 AM, when the power of attorney holder of the plaintiff went to the spot, then he found that the petitioner No. 1 has constructed a boundary wall and has also fixed gate and has parked his

two buses and one car and, accordingly, he has forcibly and in illegal manner taken the possession of the property in dispute. Both the applications were opposed by the petitioner No. 1. However, by the impugned order, the applications have been allowed and the petitioner No. 1 has been impleaded as an additional defendant and the application filed under Order 6 Rule 17 of CPC has also been allowed.

4. Challenging the order passed by the Court below, it is submitted by the counsel for the petitioners that from plain reading of application filed under Order 6 Rule 17 of CPC, it is clear that the petitioner No. 1 had not acted in the capacity of power of attorney holder, but he is alleged to have forcibly taken possession of the property in dispute in his individual capacity, therefore, it is a fresh cause of action against a new defendant and the suit cannot be clubbed and the application under Order 6 Rule 17 of CPC could not have been allowed by permitting the respondent No. 3/plaintiff to join a fresh cause of action as it would amount to misjoinder of cause of action. It is submitted that multifarious cause of action and misjoinder of parties would frustrate the suit and relied upon the judgment passed by the coordinate Bench of this Court in the case of **Pahalwan Singh & Others v. Leela Bai & Others** reported in **1999 (1) J LJ 349** and **Devesh Chandra Gupta Vs. Dina Nath** reported in **AIR 1992 Allahabad 115**.

5. Per contra, it is submitted by the counsel for the respondents No. 1 to 3 that the petitioner had not raised any objection with regard to misjoinder of cause of action before the Trial Court. Even no such ground has been mentioned in the writ petition and for the first time, it has been raised during the course of arguments. It is submitted that in

petition under Article 227 of the Constitution of India, a plea which has not been raised in the Court below cannot be permitted to be raised and to buttress his contention, counsel for the respondents has relied upon the judgment passed by the coordinate Bench of this Court in the case of **Secretary Krishi Upaj Mandi Samiti, Damoh Vs. Labour Court, Sagar** reported in **2004 (II) MPWN 26**, **Vindhya Chamber of Commerce and Industries Vs. Presiding Officer** reported in **1993 (II) MPWN 163**, **Asha Lamba (Smt.) and others Vs. Board of Revenue and others** reported in **1999 RN 401**.

6. Heard the learned counsel for the parties.

7. The application filed under Order 6 Rule 17 of CPC has been made on the basis of events, which according to the plaintiffs are subsequent to the remand of the case. Although the counsel for the petitioner tried to submit that the amendment application has been filed with malafide intention to bypass and over come the findings recorded by the Appellate Court with regard to the possession over the land in dispute, but fairly conceded that while deciding the Miscellaneous Appeal No. 178/2006, the High Court has already directed that any observation made by the Appellate Court shall not come in the way of the Court while deciding the case on the basis of evidence in accordance with law. Furthermore, while deciding the application filed under Order 6 Rule 17 of CPC, this Court cannot look into the correctness of the pleadings. The correctness of the pleadings is to be adjudicated after recording of evidence. Since the petitioner No. 1 has been impleaded as a defendant for the first time, therefore, he will be entitled to file his written statement and issues will also be framed.

8. Under these circumstances, this Court is of the considered opinion that the petitioner did not raise any objection with regard to misjoinder of cause of action before the Trial Court as well as before this Court and took this objection for the first time during the course of arguments and under Article 227 of the Constitution of India. This Court is merely required to ascertain as to whether the Court below has acted within its jurisdiction or not? It is accordingly held that the petitioner cannot be permitted to raise an objection for the first time in a petition under Article 227 of the Constitution of India and that too during the course of arguments.

9. As no jurisdictional error could be pointed out by the counsel for the petitioner, therefore, the order dated 22.04.2014 passed First Civil Judge, Class-I, Gwalior in Case No.54-A/2013 is hereby **affirmed**.

10. The petition fails and is hereby **dismissed**.

11. Interim order dated 09.05.2014 is hereby vacated.

12. Since the suit was filed in the year 1988 and is pending for the last 34 years, the Trial Court is directed to conclude the Trial within a period of one year from the date of receipt of certified copy of this order.

13. Counsel for the parties are directed to file copy of this order before the Trial Court positively within a period of 15 days from today.

14. Office is also directed to immediately send a copy of this order to the Trial Court for necessary information and compliance.

(G.S. AHLUWALIA)
JUDGE

Abhi

Digitally signed by
ABHISHEK CHATURVEDI
Date: 2022.08.26 17:00:52
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