IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 14th OF DECEMBER, 2023

MISC. PETITION No. 1453 of 2019

BETWEEN:-

1. **SMT.DAMINI V MAHADIK W/O LATE VITTHAL RAO MAHADIK, AGED ABOUT 62 YEARS, MAHADIK SAHAB KA BADA DAL BAZAR LASHKAR GWALIOR (MADHYA PRADESH)**
2. **TEJ SINGH MAHADIK S/O LT SHRI VITTHAL RAO M AHADIK, AGED ABOUT 31 YEARS, OCCUPATION: ADVOCATE MAHADIK SAHAB KA BADA DAL BAZAR LASHKAR GWALIOR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI HARISH DIXIT - ADVOCATE)

AND

M/S SHRI RAM DEVELOPERS THROUGH PARTNERS RAMESH CHANDRA AGRAWAL S/O NARAYAN DAS AGRAWAL AGED 64 YEARS OCCUPTATION BUSINESS R/O RADHA APARTMENT SHRI RAM PALACE LASHKAR GWALIOR AND SHAILESH JAIN S/O VISHUN JAIN AGED 40 YEARS R/O SADAR BAZAR MORAR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI PRASHANT SHARMA & SHRI VIKAS SINGHAL – ADVOCATES FOR RESPONDENT)

This petition coming on for admission this day, the court passed the following:

ORDER

With consent heard finally.

1. Present petition is under Article 227 of the Constitution taking exception to order dated 26.09.2018 passed by trial Court whereby two applications one is under Order VI Rule 17 CPC and another is under Order 1 Rule 10 CPC preferred at the instance of petitioners/defendants were rejected.

2. Precisely stated facts of the case are that respondent/plaintiff and petitioners entered into an agreement for sale of property as referred in the agreement dated 02.06.2010 in respect of suit property in which total 1,02,500 sq ft. was available in which 5512 sq. ft. was to be maintained by the seller/petitioners and one fact was mentioned that all remaining undivided share would go in favour of purchaser. Since, dispute arose in respect of execution of agreement, therefore, a suit for specific performance of contract was filed at the instance of respondent against petitioners.

3. Written statement was filed by petitioners/defendants and rebutted the claim made by plaintiff. In written statement, in para 8 one fact has been mentioned regarding First Appeal bearing No.252/2004 (Vitthal Rao and others vs. Smt. Kokila Bai and others) in which judgment and decree was passed on 24.11.2014 and appeal was dismissed and aunts (बुआ) of petitioner No.2 were also found as co-sharers in the ancestral property. Some of the part of the property was sold by co-sharers to respondent/plaintiff and this fact defendants wanted to incorporate in their written statement in para 8. Said amendment was declined vide impugned

order. Therefore, this petition has been preferred.

4. Another application preferred at the instance of defendants was under Order 1 Rule 10 CPC, in which defendants wanted to implead those purchasers who purchased the property from aunts of petitioner No.2 after aunts being declared as co-sharers in the suit property. Since, they are purchasers of the suit property, therefore, their impleadment amounts to incorporation of proper and necessary party. Said application was also rejected. Therefore, this petition has been preferred.

5. It is the submission of learned counsel for petitioners that trial court erred in rejecting the application under Order VI Rule 17 CPC. Trial has not commenced yet. Issues has not been framed yet. At the initial stage of the case if the pleadings are appropriately modified/amended then it places factual facts of the case in better position for trial court to appreciate. Parties can also lead evidence accordingly. It would serve the cause of justice more effectively specially when it does not alter the nature of dispute.

6. Learned counsel for petitioner also raised the point in respect of application under Order 1 Rule 10 CPC to submit that those subsequent purchasers are now proper and necessary party. Partition has not been yet taken place, and therefore, for effecting the partition in metes and bounds it is imperative that all parties having stakes in the disputed property be impleaded so that the effective decree can be passed. Subsequent purchasers now stepped into the shoes of co-sharers/co-owners of the suit property.

Therefore, they are to be impleaded.

7. Learned counsel for respondent opposed the prayer and raised objections in respect of amendment to be carried out in the written statement. According to learned counsel for respondent, agreement indicates that all complete undivided part of the land (except 5512 sq ft) would be purchased by respondent/plaintiff. Now defendants cannot take another stand while incorporating the fact as tried to be incorporated. Agreement in toto is to be performed as it was executed.

8. So far as objections in respect of application under Order 1 Rule 10 CPC is concerned, it is the submission of learned counsel for respondent that they are not proper and necessary party. They are not required to be impleaded because agreement itself stipulates that all undivided part (except 5512 sq ft.) would be sold by the petitioners to respondent. Therefore, he supported the impugned order so far as rejection of application under Order 1 Rule 10 CPC is concerned.

9. Heard the learned counsel for the parties at length and perused the documents appended thereto.

Regarding application under Order VI Rule 17 CPC.

10. In the instant case petitioners are defendants in the suit for specific performance of contract filed by the respondent/plaintiff.

11. It is the submission of petitioners that aunts of petitioner No.2 are co-sharers in the ancestral property, and therefore, aunts pursued the litigation and three aunts namely Kokila Bai @ Rekha

Bai, Nirmala Bai and Tilottama Dhumal were alive at the time of death of Govind Rao Mahadik (grand father of petitioner No.2) and one daughter Nirmala Bai died during his lifetime. They filed a suit for declaration and permanent injunction in regard to the suit property and succeeded. Will executed by Govind Rao Mahadik was disproved. First Appeal bearing No.252/2004 preferred by Vitthal Rao Mahadik was dismissed vide judgment dated 24.11.2014. Therefore, they were effectively the co-sharers in the suit property. They disposed of their share to different purchasers, and therefore, that aspect wanted to be clarified by the present petitioners. Therefore, the amendment application was preferred.

12. Purpose of amendment is bonafide and does not alter the nature of dispute. It clarifies the position regarding the exact status of land. Therefore, there is no illegality if the said amendment is carried out. Learned trial court adopted very pedantic and hyper technical approach. If the application is filed before framing of issues and does alter the nature of dispute rather facilitated the parties to bring clarity to the pleadings then such pleadings are required to be incorporated.

13. In the considered opinion of this Court, trial Court erred in passing the impugned order rejecting the application under Order VI Rule 17 CPC. Therefore, to that extent petition stands allowed and impugned order is hereby set aside. Petitioners may incorporate pleadings in the written statement accordingly. Plaintiff shall be at liberty to cause consequential amendment, if advised so.

Regarding application under Order 1 Rule 10 CPC.

14. In the case in hand, petitioners/defendants want to incorporate subsequent purchasers in the array of defendants and those subsequent purchasers are those persons who purchased the property sold by paternal aunts (बुआ) of petitioner no.2. Since they have purchased the property, therefore, they have become co-sharers in the suit property. Therefore, they are required to be impleaded so that respective rights, title, interest and possession can be elucidated in the suit proceedings. Apex Court in the case of **A Nawab John and others vs. V.N. Subhramaniyam, (2012) 7 SCC 738** has held in following words:-

> 19. Such being the scope of Section 52, two questions arise: whether a pendente lite purchaser (1) is entitled to be impleaded as a party to the suit?; (2) once impleaded what are the grounds on which he is entitled to contest the suit ?
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> 20. This Court on more than one occasion held that when a pendente lite purchaser seeks to implead himself as a party - defendant to the suit, such application should be liberally considered. This Court also held in Smt. Saila Bala Dassi v. Smt. Nirmala Sundari Dassi and Another, AIR 1958 SC 394, that, "justice requires", a pendente lite purchaser "should be given an opportunity to protect his rights". It was a case, where the property in dispute had been mortgaged by one of the respondents to another respondent. The mortgagee filed a suit, obtained a decree and 'commenced proceedings for sale of the mortgaged property'. The appellant Saila Bala, who purchased the property from the judgment-debtor subsequent to the decree sought to implead herself in the execution proceedings and resist the execution. That application was opposed on various counts. This Court opined that Saila Bala was entitled (under Section 146 of the C.P.C.) to be brought on record to defend her interest because, as a purchaser pendentelite, she would be bound by the decree against her vendor.
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> 21. There is some divergence of opinion regarding the question, whether a pendente lite purchaser is entitled, as a

matter of right, to get impleaded in the suit, this Court in Amit Kumar Shaw V. Farida Khatoon held that:

> "**16.....**Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee endent elite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee pendent elite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendentelite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendent elite of an interest in immovable property is a representative in- interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case." [Emphasis supplied]

22. The preponderance of opinion of this Court is that a pendente lite purchaser's application for impleadment should normally be allowed or "considered liberally".

15. Since the persons who are to be impleaded are subsequent purchasers, therefore, they are required to be impleaded as party defendants. Trial Court erred in rejecting the application under Order 1 Rule 10 CPC in this regard. Hence, the said order is hereby set aside.

16. Resultantly, petition stands **allowed**. Impugned order in respect of both the applications is hereby set aside. The subsequent purchasers are permitted to be impleaded as defendants.

Thereafter, suit shall proceed.

17. Since the suit is pending from the year 2014 and both the parties expressed their wish to conclude the suit proceedings, therefore, it is expected that party shall not take undue adjournments and trial Court shall take all endeavours to conclude the suit proceedings as expeditiously as possible preferably within a period of 15 months from the date of receipt of certified copy of this order.

18. Petition stands disposed of accordingly.

(ANAND PATHAK)
JUDGE

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